

Circular No. 10-30
Date 2 December 2010
Doc ID. A232914

Contact Lyn Brown
02 4428 4161
lyn.brown@dlg.nsw.gov.au

COUNCILLORS' ACCESS TO INFORMATION

This Circular has been prepared with the assistance of the NSW Ombudsman, the Independent Commission Against Corruption and the NSW Office of the Information Commissioner.

The *Local Government Act 1993* (the LGA) requires that councillors as a group direct and control the council's affairs, allocate resources, determine policy, and monitor its performance. As individuals, councillors also communicate council policy and decisions to the community, exercise community leadership and represent the views of residents and ratepayers to council. A councillor's role extends beyond attendance at formal meetings of council.

The LGA also makes it clear that the general manager is responsible for the day to day operations of the council.

Councillors have a right to access council information that is reasonably necessary for exercising the functions of their civic office, including those roles outlined above which extend beyond decision making at formal meetings.

References in this Circular to information do not include questions, either with or without notice, at council meetings unless specified.

The entitlement of a councillor to information is expressly included in the Model Code of Conduct for Local Councils in NSW (section 440 LGA). Clause 10 of the Model Code provides guidance on the requirements for staff to provide information to councillors. It states that councillors must be provided with sufficient information to carry out their functions.

The Model Code of Conduct is reinforced in the draft *Guidelines for the Appointment and Oversight of General Managers* where they state that:

"The general manager is also responsible for ensuring councillors are provided with information and the advice they require in order to make informed decisions and to carry out their civic duties."

The new *Government Information (Public Access) Act 2009* (GIPA Act) was recently enacted to promote openness, accountability and transparency. It is designed to make government agencies, including general purpose councils and county councils, more proactive in providing information to the public. This includes being proactive in providing information to councillors.

The GIPA Act replaced section 12 of the LGA and the *Freedom of Information Act 1989* from 1 July 2010. Schedule 1 to the Government Information (Public Access) Regulation 2009 incorporates the information that was previously contained under section 12 of the LGA. This information is open access information and is required to be provided by councils for public access on their websites.

A council is required to comply with the spirit and intent of the GIPA Act, and applicable common law and the Model Code of Conduct, so as to provide open access to the council's documents, other than where public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure. For example, there may be occasions where the release of personal information or information identifying a person would be contrary to the *Privacy and Personal Information Protection Act 1998*. It is expected that general managers will act in accordance with the relevant law when providing information to councillors.

When making a request for information, councillors should draft the request carefully and should precisely detail the information, or the nature of the information, sought. It is expected that councillors will act reasonably in making a request for information.

When dealing with a request by a councillor for information, the general manager must act reasonably. Given that a councillor may need information to perform their public duty, if a request is to be denied, reasons for the refusal must be provided.

Where it is believed that significant resources will be required to respond to a request for information, the general manager should advise the councillor and provide details of the estimates of time and/or costs that are likely to be incurred in providing the information. An indication should also be given of what other matters will not be able to be attended to as a result of compiling the requested information.

Any information or service that is publicly available should also be available to councillors. In addition, general managers should, as routine, provide councillors with access to a range of material to enable them to perform their role properly. This includes relevant statutes, policy and procedure manuals, regular financial reports and updates on meeting performance indicators contained in council planning documents.

Any information that is given to a particular councillor in the pursuit of their civic duties should also be available to any other councillor who requests it.

It is suggested that councils have in place a policy and procedure for managing councillor requests for information. This should include how the councillors make such requests and to whom. For example, requiring that requests be verbal or in writing, specifying a timeframe for a response, and providing reasons in the case of a refusal to provide the information sought.

Councils should also amend their existing access to information policy or adopt a new policy providing a review mechanism and councillors should be informed of the right of review.

Councils should indicate in their policy that the NSW Ombudsman and the Division have a complaint handling function, should issues arise.

The policy should also indicate that councillors who have been refused access to information are entitled to lodge a request under the GIPA Act. The GIPA Act provides three options to have a decision reviewed: an internal review by the agency (in this case, the council); an external review by the Information Commissioner; or external review by the Administrative Decisions Tribunal.

Similarly, when councillors ask questions with notice at council meetings, general managers should use their best endeavours to provide answers to those questions in a timely manner. It is not appropriate for general managers or councillors to ask the council to determine whether the questions asked by individual councillors should or should not be answered. It is also important that questions do not result in substantial new work or require the development of new policy as part of the answer.

Councillors are reminded of Circular to Councils 10-10 in relation to Questions Without Notice.

It is not always possible to draw a clear line between the leadership and policy roles of a councillor under section 232 of the LGA and undertaking operational activities, which are the responsibility of staff. Councillors need to have an understanding of operational issues and access to accurate and timely information to make decisions required of them. This understanding can often only be obtained with the assistance of advice provided by staff through the general manager.

The provision of sufficient, relevant and timely information is a critical aspect of the councillor decision making process. Councillor access to information is vitally important to achieve informed decision making. In this regard, general managers have an obligation to ensure that councillors are provided with the necessary information to undertake their civic duties effectively.



Ross Woodward
Chief Executive, Local Government
A Division of the Department of Premier and Cabinet