

DETERMINATION

Publication of Disclosure of Interest Returns on Council's website

Background

As provided by Section 440 of the Local Government Act 1993, councils are required to adopt a code of conduct that incorporates the Model Code of Conduct for Local Councils in NSW 2020. Part 4 of the Model Code requires a councillor or a designated person to complete and lodge with the general Manager a Return of his or her pecuniary interests. Those Returns contain personal information about each councillor and designated person, including his or her name, address and signature, and 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 association. The form of the return is set out in Schedule 2 of the Model Code.

The Government Information (Public Access) legislation (GIPA) provides collectively in Section 18 of the Act and Schedule 1 of the Regulation, those council documents which are "Open Access Information" and, as such, which are required to be made publicly available on a council's website, 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.

The Returns of Councillors and designated persons are one such class of document that is "Open Access Information".

The NSW Information and Privacy Commission's 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 dated September 2019 provides that

- The Returns should be made publicly available on 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 the Returns are "open access information" is a factor that must weigh heavily 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.

This requirement is backed up by the recent IPC Video – "Guidance on Publishing Disclosure of Interest Returns by Councils".

To decide whether or not there is an overriding public interest against disclosure of the information by way of publishing unedited Returns on Council's website, I applied the public interest test, which is set out in Section 13 of the GIPA Act.

I applied that test by:

- Identifying any public interest considerations in favour of disclosure;
- Identifying any relevant public interest considerations against disclosure; and
- Deciding where the balance between them lies.

I did this in the way required by Section 15 of the GIPA Act, which is:

- In a way that promotes the objects of the GIPA Act;
- With regard to any relevant guidelines issued by the Information Commissioner;
- Without taking into account the fact that disclosure of information may cause embarrassment to, or a loss of confidence in the Government (as that fact is irrelevant); and
- Without taking into account the fact that disclosures of information might be misrepresented or misunderstood by any person (as that fact is irrelevant).

Public interest considerations in favour of disclosure

Under Section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations.

I find that the following considerations in favour of publishing an unedited version of the Returns on the Council's website are relevant:

- Publishing the information further promotes openness and transparency in local government
- Publishing the information further provides accountability and further enforces the avoidance of any conflict of interest of councillors and designated persons who exercise decision making functions
- Publishing the information could reasonably be expected to ensure effective oversight of the expenditure of public funds
- Publishing the information could reasonably be expected to reveal or substantiate that an agency (or member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct
- Publishing the information further supports the objects of the GIPA Act.

Additionally, the fact that the Returns are "open access information" is a factor that should weigh heavily in favour of publication.

Also, publishing the Returns is one way of protecting the integrity of Council's decision making processes by allowing scrutiny of potential conflicts of interest that would arise where Council officials participate in decision making from which they or their close associates may derive, or be perceived to derive, personal or financial benefit.

So that members of the public can 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 as well as other verbal and written declarations of interest.

Public interest considerations against disclosure

When applying the public interest test, the only public interest considerations I can take into account are those set out in Table 1 to Section 14 of the GIPA Act. In applying the public interest test, I need to consider whether they could reasonably be expected to have the effect outlined in the table.

Section 14 Table 1 of the GIPA Act provides relevantly:

“(3) 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;
- (f) Expose a person to risk of harm or of serious harassment or serious intimidation.”

In the first instance, ‘personal information’ is defined in Clause 4 of Schedule 4 of the GIPA Act:

“(1) In this Act, personal information means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or could reasonably be ascertained from the information or opinion.”

Also, the term ‘reveal’ is defined in Clause 1 of Schedule 4 of the GIPA Act as:

“To disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure).”

Based on the above definitions, the Returns contain personal information which would be revealed if the Returns were published on the Council’s website unedited. The personal information contains information concerning individuals such as names, residential address and signature.

Secondly, I have considered whether publishing personal information on Council’s website could reasonably be expected to expose a person to serious intimidation or harassment. While I believe that most of those who might access these Returns would never have these intents in mind, there unfortunately exist in society a small minority who would. Therefore, publishing unedited versions of these Returns on Council’s website could reasonably be expected to have this effect.

Balancing the public interest test

Publishing unedited Returns to the Council’s website is a measure that I believe instantly displays the integrity of Councils’ decision-making process and allows the scrutiny of potential conflicts of interest that may arise where decision makers have close association that derive, or be perceived to derive, personal or financial benefit.

I have considered the relevant public interest consideration in favour of and against publishing unedited Returns to Council’s website.

After weighing the public interest considerations, I consider some personal information in the Returns is required to be redacted prior to publishing on Council's website to protect the privacy of Councillors and designated persons.

I consider it is in the public interest for the name of the Councillor and designated person to remain on the published Return as it serves the purpose of disclosing the Councillors and designated persons who have completed a return for the specified period. Further, the names of the Councillors and designated persons are either already in the public domain, or are freely provided to the public to identify the relevant Council Officials who are responsible for decision making and/or carrying out their duties and functions when dealing with the public.

In relation to the remaining personal information contained in the returns, I consider the public interest considerations against the publishing of residential property addresses and signatures on the Returns outweigh the public interest for disclosure. I consider that all other information in the Returns should be published.

Once personal information is published, it is very hard to remove the information from the internet. The information continues to remain in the public domain and can continue to be accessed by the public via various search engines. There is a potential risk personal information such as signatures can be accessed by phishing and to provide opportunities for hackers for identity theft or other criminal acts against the person with very harmful consequences.

When considering if the publishing of personal information in regards to residential property addresses on the web could reasonably be expected to have potential to place an individual their family or property at a risk, would need to be assessed on each individual case and on its own merits against the public interest considerations for and against disclosing via the web.

In determining the considerations, aspects such as applicant's motive and interest in seeking the information, their relationship with Council and any other factors particular to the applicant, would need to be examined.

While I believe the majority of the public accessing Returns (unedited) would be reasonable in their use of the information, there is still the risk of a minority who could misuse this information.

Council has a duty of care to ensure a Councillor's and designated person's personal information is protected where there is an overriding public interest against disclosure. Publishing a redacted version of the Returns by deleting a person's residential address and signature assists in protecting the personal information and ultimately the individual.

Further, by continuing to make unedited Returns publicly available for inspection and copying free of charge, subject only to any special public interest considerations provides a controlled environment where Council can:

- Record who has requested the information;
- Assess if there are any public interest considerations against disclosure and;
- Notify the Councillor or designated person that the unedited Return has been accessed.

Publishing to the Council website provides information to an unrestricted audience in an uncontrolled environment which cannot be monitored.

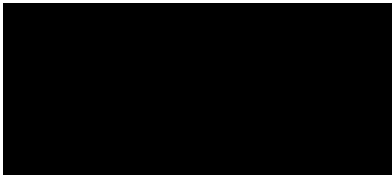
While I acknowledge that publishing a redacted Return on council's website may render part of it to be meaningless as that information is relied upon to determine a pecuniary interest, I am not persuaded that this will disadvantage the public, as the full version of the Returns remains available for inspection on request subject to any overriding public interest considerations against disclosure.

Determination

Accordingly, I have determined:

- To facilitate public access of Returns via the Council website by deleting information from the Return where there is an overriding public interest against disclosure of the signature or the person and their residential address.
- To publish the 2020/21 Returns of Councillors and designated persons and Returns thereafter in a redacted form on Council's website.
- To continue to make un-redacted Returns publicly available for inspection and copying free of charge, subject to any specific public interest considerations against disclosure.
- No to publish Returns on Council's website in a redacted form before 2020/21 as to do so would represent an unreasonable cost to Council.
- Council will continue to keep a record indicating, in general terms, the nature of the information redacted from the Return in accordance with Section 6(5) of the GIPA Act.

This determination is not a reviewable decision.



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15.2.22