

# **ATTACHMENT TO AGENDA ITEM**

**Ordinary Meeting**

**21 June 2016**

**Agenda Item 8.5      Freedom of Information Policy**

**Attachment 1      Freedom of Information Policy 37.POL9 ..... 415**

# GREATER SHEPPARTON CITY COUNCIL

Policy Number 37.POL9

## Freedom of Information Policy

Version 1.0

Adopted Day Month Year

Last Reviewed Day Month Year

<b>Business Unit:</b>	Corporate Governance
<b>Responsible Officer:</b>	Team Leader Governance Manager Corporate Governance
<b>Approved By:</b>	Chief Executive Officer
<b>Next Review:</b>	March 2020

## PURPOSE

This Policy sets out the process to be followed when Council receives a request for documents under the *Freedom of Information Act 1982 (Vic)*(**Act**).

## OBJECTIVE

Council is an 'agency' under the Act and is responsible for processing all freedom of information (**FOI**) requests in accordance with the Act. Processes in this policy have been developed to meet the requirements set out in the Act.

It is intended that this policy be used by Council staff in processing requests made under the Act.

This policy may also assist members of the public in making an FOI request to Council, or having a greater understanding of how Council will handle an FOI request.

## SCOPE

This policy applies to all staff, Councillors, contractors and volunteers of Council. Such persons acting on Council's behalf are subject to the requirements of the Act and are expected to comply with both the Act and this policy in respect of FOI requests.

## DEFINITIONS

Reference term	Definition
Act	the <i>Freedom of Information Act 1982 (Vic)</i>
Agency	a department, council or a prescribed authority
Applicant	a person who has made a request in accordance with section 17, or has applied under section 12(1), of the Act
Document	as defined under the Act, includes a map, graph, drawing, photograph, label or other attachment, disc, tape, sound track, or film, as well as a document that has been hand written or typed. Information held on computer disk or in a database fits the definition of a document. This includes any copies, reproductions or duplications and any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them
FOI	freedom of information
FOI Officer	Refers to officers employed by Greater Shepparton City Council in the following positions: <ul style="list-style-type: none"> <li>• Manager Corporate Governance</li> <li>• Team Leader Governance</li> </ul>
Principal Officer	Council's Chief Executive Officer

## POLICY

## 1. Publications available outside of FOI

### Publications

Council publishes a number of newsletters, brochures and guides for residents, businesses and visitors.

For copies of any of these documents, please email us at [council@shepparton.vic.gov.au](mailto:council@shepparton.vic.gov.au).

Full copies of Council Meeting Agendas or Minutes of Meeting can be found at <http://greaterShepparton.com.au/council/governance/council-meetings/minutes-agendas>

### Section 86 Committee Meeting Minutes

All meeting minutes of special committees established under section 86 of the *Local Government Act 1989*, (other than confidential minutes) are available for public inspection for a period of 12 months from the meeting date.

### Studies, Strategies, Masterplans and Reports

Council often has several key strategic planning projects underway at any one time.

These range from consideration of proposed large scale developments to policy reviews and the development of planning guidelines.

To view copies of the strategies online, please refer to our website at <http://greaterShepparton.com.au/bpi/planning/strategic-planning/strategic-strategies-and-reports>

### Building Permits, Notices & Orders

Customers may inspect three public registers maintained by the Building Department. The first register captures all building permits and the second register records all occupancy permits. The third register contains all building notices and building orders issued. These public registers may be inspected free of charge at the Council Office located at 90 Welsford Street, Shepparton or by contacting the building department on (03) 5832 9885.

### Planning Applications & Permits

Customers may inspect a register containing advertised planning applications or track the progress of a planning application at: [www.greaterShepparton.com.au/bpi/planning](http://www.greaterShepparton.com.au/bpi/planning)

Customers can inspect all documents on an \*Open Planning File by contacting the Planning Department on (03) 5832 9730.

\*Open File - A file is considered open/current until:

- 60 days after issuing or refusing a permit
- the planning application is withdrawn
- the matter is subject to review at the Victorian Civil and Administrative Tribunal (**VCAT**), or a decision is made by VCAT.

Once a planning file is closed, only the following documents from a planning file are freely available:

- Permit or refusal
- Signed delegate or Council report
- VCAT Decision
- Planner's submission to VCAT
- Endorsed plans

## 2. Requests for Documents

It is recommended that applicants contact Councils FOI Officer prior to submitting an FOI request.

FOI requests must be made in writing and lodged with Council, accompanied by the applicable application fee, or an application to waive fee (see 'Applicable Fees and Charges', below). While Council will accept any FOI request made in any written form (such as email or letter), it encourages all applicants to submit an FOI request using Council's *Request for Access to Documents Under the Freedom of Information Act 1982 Form (Attachment 1)*.

The Act requires applicants to state their requests clearly enough for relevant documents to be identified. If a request is not sufficiently clear, Council will assist the applicant in clarifying his or her request to enable it to be processed. An FOI request will only be processed by Council once it is sufficiently specific and clear.

Once a valid FOI request is made, the FOI Officer must conduct a thorough search, with the process of the search, and the outcomes, recorded. All correspondence and communications with applicants will be managed by the FOI Officer.

## 3. Applicable Fees and Charges

The charges applicable for processing an FOI request are fixed in accordance with regulations made under the Act.

### Application fee

The application fee for making an FOI request is set by the Treasurer and is reviewed annually in July each year. Once reviewed, the new figures are published in the Government Gazette, and the current application fee is also clearly outlined on Councils website.

Payment of the application fee will be accepted via eftpos, cheque or money order. In accordance with section 17(2B) of the Act, an applicant may request that the application fee is reduced or waived. With any application for Council to waive the application fee, applicants must also provide Council with a copy of their current concession card to enable Council's FOI Officer to determine whether to waive the application fee.

### Access charges

Section 22 of the Act and the *Freedom of Information (Access Charges) Regulations 2014* set out the charges that can be levied for the provision of information. The key charges are available on Councils website, or upon request by contacting the Freedom of Information Officer on (03)5832 9868.

No charges apply to requests for the correction or amendment of a person's own personal information.

#### 4. Access to documents

Applicants have the right to request any document which is in the possession of Council, but access is subject to any applicable exemptions under the Act.

A person does not have the right to obtain under the Act publications which are sold by Council, documents which are held by the Public Record Office of Victoria or documents that are readily available to the public, including where access is subject to the payment of a fee.

The Act allows for requested documents to be withheld where they are considered to be exempt from release. The FOI Officer will consider, subject to the provisions of the Act, whether each document within the scope of the FOI request is exempt and decide whether it should be released in full, released with exempt details deleted (released in part), or withheld.

Any third parties mentioned in the documents may need to be consulted prior to a decision being made on release of the documents. Section 34 of the Act requires consultation with third parties in relation to the disclosure of business information or trade secrets prior to a decision being made on release of the information.

Third parties may also need to be notified of a decision to release their information and their appeal rights.

Where it is proposed to release documents containing the personal or business information of a third person, Council will not give the FOI applicant a copy of these documents until the appeal period of 60 days has elapsed. Sometimes this can be avoided if an applicant states in their FOI request that they do not require personal information to be provided.

If a requested document does not exist, has been destroyed, or cannot be found, despite a thorough search, this will be communicated to the applicant in the decision letter.

#### 5. Exempt documents

A document or part of a document can be regarded as exempt if (among other things):

- it is an internal "deliberative process" document and its release would be contrary to the public interest (exempt under section 30 of the Act);
- it would be privileged from production in legal proceedings on the ground of legal professional privilege (exempt under section 32 of the Act);
- it concerns the personal affairs of a person other than the applicant where disclosure would be unreasonable in the circumstances (exempt under section 33 of the Act);
- it is information communicated in confidence to Council (exempt under section 35 of the Act); or
- its release would disadvantage Council or another organisation commercially (exempt under section 34 of the Act).

#### 6. Decision letter

Under section 26 of the Act, Council's Chief Executive Officer is deemed responsible for making decisions relating to access to documents and advising applicants in writing of that decision. By way of delegation this power has been delegated to Council's FOI Officer.

If the FOI Officer decides not to release a document or part of a document, or decide that access should be deferred (section 24) or that no such document exists, the

applicant must be sent a written notice that sets out findings on material facts, the reasons for the decision, the name and designation of the FOI Officer and details of the applicant's review rights (section 27).

If an exemption is claimed under section 30 (internal working documents), the letter must include the factors considered in deciding that release would be contrary to the public interest.

The applicant should be informed who to contact if they have any queries about the decision and how to make a complaint or request a review with the FOI Commissioner, and the deadline to do so.

## **7. FOI Commissioner - FOI Reviews and Complaints**

When an applicant is dissatisfied with the FOI Officer's decision not to release all or part of a requested document, the applicant has 28 days from receipt of the written notice of the decision to lodge a request for a review of the decision. This review is conducted by the FOI Commissioner.

If access is denied because the document does not exist or cannot be found after a thorough and diligent search, or if the FOI request has been delayed, the applicant has the right to complain to the FOI Commissioner. A complaint must be made within 60 days after the action or conduct they wish to complain about occurred.

## **8. Review by the Victorian Civil and Administrative Tribunal**

Decisions of the FOI Commissioner can be appealed to VCAT. An application must be made within 60 days from the date of the notice of decision of the FOI Commissioner (see section 52 of the Act).

If a disclosed document includes a third party's personal or business information, the third party has 60 days from the date of the decision letter to apply to VCAT for a review of the decision. An applicant's access to that document will be deferred until the expiry of that appeal right.

## **9. Amendment of Personal Records**

Under section 39 of the Act, an individual or, in the case of a deceased person, the next-of-kin, is entitled to request in writing the correction or amendment of any information pertaining to the individual's own personal affairs that has been previously released to that person.

A request for amendment of personal records must be made in writing in accordance with section 40 of the Act.

## **RELATED LEGISLATION**

- *Freedom of Information Act 1982*
- *Freedom of Information (Access Charges) Regulations 2014*
- *Freedom of Information Regulations 2009*
- *Health Records Act 2001*
- *Public Records Act 1973*
- *Privacy and Data Protection Act 2014*
- *Local Government Act 1989*

**REVIEW**

This Policy will be reviewed by the Manager Corporate Governance in conjunction with the Executive Leadership Team. Reviews will take place within six months of each general election, however additional reviews may be undertaken as required.

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**Peter Harriott****Chief Executive Officer****Date**

**Attachment 1:** Request for Access to Documents Under the *Freedom of Information Act* 1982 Form