

Navigating the maze

A guide to the alternative regimes for access to personal information in NSW

<i>FOI ACT*</i>	<i>PPIP ACT*</i>	<i>LG ACT*</i>
Applies to:		
Documents	Information	Documents
Scope:		
All documents, including personal affairs (i.e. matters of private concern to an individual, or information which concerns or affects a person as an individual, whether it is known to other persons or not)	Personal information only (i.e. information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion)	<ul style="list-style-type: none"> All documents, including personnel matters; and Personal hardship of residents and ratepayers
Exclusions from coverage:		
<ul style="list-style-type: none"> Agencies listed in Schedule 2 to the FOI Act (s.9) Judicial functions of courts and tribunals (s.10) Matters subject of a Ministerial Certificate (s.25(3)) 	<ul style="list-style-type: none"> Matters excluded from definition of personal information (s.4(3)) Courts, tribunals and royal commissions (s.6) Information collected prior to commencement of Part 2 (s.20(3)) [1 July 2000] Certain functions of agencies listed in s.27 	<ul style="list-style-type: none"> Correspondence and reports relating to a matter received or discussed at, or laid on the table or submitted to, a meeting when closed to the public (s.11(2)) [this probably overrides ss.12(1) & 12(6)] Correspondence or reports relating to a matter laid on the table or submitted to a meeting open to the public where the council or committee resolves that they are to be treated as confidential (s.11(3)) Business papers for matters considered when part of a meeting is closed to the public (s.12(1)) Minutes of any parts of a council or committee meeting closed to the public (other than resolutions and recommendations) (s.12(1)) Certain parts of DAs or other applications for approval to erect a building (s.12(1A))
Exemptions:		
<ul style="list-style-type: none"> Exempt documents (s.25(1) and Schedule) Substantial and unreasonable diversion of resources (s.25(1)) Documents available for inspection or purchase (s.25(1)) Advance deposits not paid (s.22) 	<ul style="list-style-type: none"> Exempt documents referred to in Schedule 1, FOI Act [s.25(1), FOI Act] (s.20(5)) Information (not in documentary form) that is exempt matter for the purposes of the FOI Act (s.20(5)) Documents available for inspection or purchase [s.25(1), FOI Act] (s.20(5)) 	<ul style="list-style-type: none"> Allowing inspection would be contrary to the public interest (s.12(6)) Personnel matters concerning particular individuals (s.12(7)) Personal hardship of any resident or rate payer (s.12(7)) Trade secrets (s.12(7))

* FOI Act: *Freedom of Information Act 1989*; PPIP Act: *Privacy and Personal Information Act 1998*; LG Act: *Local Government Act 1993*

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	<ul style="list-style-type: none"> • Law enforcement and related matters (s.23) • Certain functions of investigative agencies (s.24) • Lawful authorisation or requirement (s.25) • Benefit to the individual concerned (s.25) • Other exemptions (s.28) 	<ul style="list-style-type: none"> • Matter the disclosure of which would: <ul style="list-style-type: none"> – constitute an offence against an Act; or – found an action for breach of confidence (s.12(7)) • Information disclosing a person’s place of living if council satisfied that disclosure would place the personal safety of the person or family at risk (s.739) • Marked ballot papers (cl.122, Elections Reg.)
Consultation prior to release:		
Consultation required prior to releasing documents affecting personal affairs (s.31)	<ul style="list-style-type: none"> • Consultation required prior to releasing documents containing information (and possibly information not in documentary form) affecting personal affairs [s.31, FOI Act] (s.20(5)) • Consultation required where personal information is to be used by the agency for a purpose other than for which it was collected (s.17(a)) 	No consultation required
Documentation:		
<ul style="list-style-type: none"> • Applications must be in writing (s.12) • Determinations must be in writing (s.28) 	<ul style="list-style-type: none"> • Applications need not be in writing • Determinations need not be in writing 	<ul style="list-style-type: none"> • Applications need not be in writing • Determinations need not be in writing
Forms of access:		
Applicant can choose form of access (s.27)	Applicant cannot choose form of access	<ul style="list-style-type: none"> • Applicant cannot choose form of access • Inspection free of charge (s.12(1)-(3)) • Copies can be made or obtained from the council (ss.9(2), 12B) [except for electoral rolls, candidate information sheets and building certificates]
Fees and advance deposits:		
Fees and advance deposits can be required or charged subject to the regulations (s.21, 22 & 67)	No provision [therefore presumably subject to no limitation]	No provision [other than a reasonable copying charge for documents to be taken away (s.12B(3))]

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Protections for agencies/council		
<ul style="list-style-type: none"> • Protection in respect of actions for defamation or breach of confidence (s.64) • Protection in respect of certain criminal actions (s.65) • Protection in relation to personal liability (s.66) 	<p>No protection for agencies or staff</p>	<p>Protection in respect of actions, liabilities, claims or demands if matters or things done in good faith for the purpose of executing any Act (s.731)</p>
Procedures for dealing with applications for access to or amendment of documents:		
<ul style="list-style-type: none"> • Applications (s.17) • Persons who are to deal with applications (s.18) • Incomplete or wrongly directed applications (s.19) • Transfer of applications (s.20) • Advance deposits (ss.21-22) • Information stored in computer systems (s.23) • Determination of applications (s.24) • Refusal of access (s.25) • Deferral of access (s.26) • Forms of access (s.27) • Notices of determination (s.28) • Consultation (ss.30-33) • Applications for amendment of records (s.40) • Persons who are to deal with such applications (s.41) • Incomplete applications (s.42) • Determination of applications (s.43) • Refusal to amend records (s.44) • Notices of determination (s.45) • Notations to be added to records 	<ul style="list-style-type: none"> • Consultation [s.31, FOI Act] (s.20(5)) 	<ul style="list-style-type: none"> • No procedures for dealing with applications for access to documents [other than reasons being given to council and public for refusal of access (s.12A)] • No provision in the Act for the amendment of documents [other than for amendment of particulars in electoral rolls – s.303]
Limits on disclosures of personal affairs to 3rd parties:		
<p>Disclosure unless:</p> <ul style="list-style-type: none"> • disclosure would involve the unreasonable disclosure of information concerning the personal affairs of any person (cl.6, Schedule 1); or • the document is otherwise exempt under a clause of Schedule 1 	<p>No disclosure unless:</p> <ul style="list-style-type: none"> • disclosure directly related to the purpose for which the information was collected and the agency has no reason to believe that the individual concerned would object to the disclosure; 	<p>Discretionary disclosure of parts of documents dealing with:</p> <ul style="list-style-type: none"> • personnel matters; or • personal hardship of any resident or ratepayer (ss.12(6), (7))

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	<ul style="list-style-type: none"> • where personal information requested by the applicant includes information about a 3rd person: <ul style="list-style-type: none"> * the 3rd person is or is reasonably likely to be aware that information of that kind is usually disclosed to the applicant; or * the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the 3rd person (section 18) • the document is not an exempt document under a clause of Schedule 1 to the FOI Act (s.20(5)); or • form) is not exempt matter for the purposes of the FOI Act (s.20(5)) 	
Reasons:		
Reasons for refusal of access must be given to applicant (s.28(2)(e))	No reasons required (unless there is a subsequent appeal to the ADT)	No reasons required to be given directly to applicant (reasons for refusal of access must be given to the council and made publicly available (s.12A))
Deemed refusals:		
<ul style="list-style-type: none"> • Initial applications – 21 days (s.24(2)) [subject to extension in certain circumstances – s.59B] • Internal reviews – 14 days (s.34(6)) 	<ul style="list-style-type: none"> • Initial applications – no provision • Internal reviews – 60 days (s.53(6)) 	Requests – no provision
Complaint handling:		
NSW Ombudsman (ss.52 - 52A)	NSW Privacy (ss.45 - 51)	<ul style="list-style-type: none"> • NSW Ombudsman • Department of Local Government
Merit review:		
<ul style="list-style-type: none"> • ADT (ss.52B - 58) • Onus of proof on respondent (s.61) 	<ul style="list-style-type: none"> • ADT (s.55) • Onus of proof on applicant 	<ul style="list-style-type: none"> • No provision for review by external body • Council must review any restriction on access to information within 3 months and then every subsequent 3 months on request (s.12A) • Persons may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the Act (s.674)