



Title: Access to Council Records – Section 12 of the
Local Government Act 1993

Category: Support - Information resource management

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public interest, confidential

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Policy owner: Director Corporate Services (Governance and Administration))

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6 February 2001 by Executive Item 5.1

Related legislation: Local Government Act 1993
State Records Act

Related policies: Code of Conduct

Related procedures:

Related forms: Access to Information
Freedom of Information

1. Purpose

The purpose of this policy is to provide guidance to people seeking to access Council's records in accordance with the provisions of Section 12 of the Local Government Act 1993.

2. Applicability

This policy applies to all Councillors and staff of the City of Canterbury and members of the public.

3. Documents Listed under Section 12(1) of the Local Government Act 1993

Any person may inspect, free of charge at Council's Administration Centre, the current version of the following documents contained in section 12(1) of the Local Government Act 1993

- the model code prescribed under section 440 (1) and the code of conduct adopted by the council under section 440 (3)
- the council's code of meeting practice
- annual report
- annual financial reports
- auditor's report
- management plan
- EEO management plan
- the council's policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors
- the council's land register
- register of investments
- returns of the interests of councillors, designated persons and delegates
- returns as to candidates' campaign donations
- agendas and business papers for council and committee meetings (but not including business papers for matters considered when part of a meeting is closed to the public)
- minutes of council and committee meetings, but restricted (in the case of any part of a meeting that is closed to the public), to the resolutions and recommendations of the meeting
- any codes referred to in this Act
- register of delegations
- annual reports of bodies exercising delegated council functions
- applications under Part 1 of Chapter 7 for approval to erect a building, and associated documents
- development applications (within the meaning of the [Environmental Planning and Assessment Act 1979](#)) and associated documents
- Local policies adopted by the council concerning approvals and orders
- records of approvals granted, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals
- records of building certificates under the [Environmental Planning and Assessment Act 1979](#)
- plans of land proposed to be compulsorily acquired by the council

- leases and licences for use of public land classified as community land
- plans of management for community land
- environmental planning instruments, development control plans and contributions plans made under the [Environmental Planning and Assessment Act 1979](#) applying to land within the council's area
- the statement of affairs, the summary of affairs and the register of policy documents required under the [Freedom of Information Act 1989](#)
- Departmental representatives' reports presented at a meeting of the council in accordance with section 433
- register of graffiti removal work kept in accordance with section 13 of the Graffiti Control Act 2008.

4. Associated Documents

Section 12(1) of the Local Government Act 1993 states that a Council must allow access to documents associated with development applications. However, the meaning of "associated documents" is not defined. Therefore, when determining requests for access to such records, Council considers the following records to be documents associated with development applications.

- the application form
- plans and specifications (subject to the exemptions provided by Section 12 (1A) of the Act)
- letters and advertisements used for public notification of the application
- report/s on the application's assessment, made to the person or body responsible for the application's determination
- any notice of determination

5. Exempt Records

Records containing the following information are not available under Section 12 of the Act:

- privileged communications between Council and its legal advisers.
- disclosures in accordance with the Protected Disclosures Act.
- information that would affect a person's personal affairs
- information that is subject to secrecy provisions
- information that affects Council's financial or property interests or property dealings.
- information that would adversely affect intergovernmental relations.
- information that would prejudice the maintenance of the law
- information affecting the security of the Council, Councillors, Council staff or Council property
- information that would, if released, constitute an offence against an Act or found an action for breach of confidence
- plans and specifications for any residential parts of a building, other than the plan that merely show its height and external configuration in relation to the site on which it is erected, except where the owners consent has been obtained to view the plans
- tenders and expression of interest lodged with Council, except information required to be made available under the Local Government (General) Regulation 2005 such as the names of tenderers

- information that would, if released, adversely affect law enforcement or public safety
- details of the personal hardship of any resident, ratepayer, or other person
- information that would, if released, be the basis of a legal action for breach of confidence
- information obtained by Council in confidence and could be expected to adversely affect the future supply of such information to Council.

In addition, access to records will be denied if the work involved in assessing and/or complying with the request for access to the records would be an unreasonable diversion of Council's resources.

An application will be deemed to involve an unreasonable diversion of Council's resources and to be, "not in the public interest" if the application does not relate to the applicant's personal affairs, and the work involved will take more than five hours of staff time to process. The tasks involved include:

- (a) determining what documents fall within the scope of the application
- (b) determining where and in what form the documents are kept
- (c) arranging for retrieval of the records sought
- (d) photocopying the retrieved documents
- (e) assessing such documents for the purposes of determining whether they are wholly or in part capable of being accessed (in the public interest)
- (f) arranging access

If an application is deemed to be an unreasonable diversion of Council's resources, the applicant may proceed with his or her request under the Freedom of Information Act, or limit the application so that it is more reasonable in its scope.

Where access to a record is restricted in accordance with this policy, the applicant will be advised in writing of the nature of the restricted document/s and the reasons for the restriction.

6. Procedure for Requesting Access to Council Records

1. All requests for access to Council's records must be made by the completion of a written application form and provide precise details about the records for which access is being sought. The only exceptions to this requirement are requests for access to those documents specified in Section 12(1).
2. On receipt of the application, all documents held by Council within the scope of the request will be photocopied for assessment, unless the request is such that it constitutes an unreasonable diversion of Council's resources in complying with, or partly complying with the request. If the request is deemed an "unreasonable diversion of resources", the applicant will be advised and if appropriate, discussions will take place on the applicant possibly modifying the request to make it reasonable.

3. The photocopied documents, together constituting and known as the "working copy set", will then be individually assessed for their suitability for release.
4. A given document will be released unless it is found, on assessment, to be an exempt record. See section 5 for definition of "exempt documents".
5. A given document will be released in an uncensored form unless it is found to contain, on assessment, parts which are considered to be exempt material.
6. Council will censor out any part of a document which contains material considered to be "exempt" rather than deny access to the whole document on the grounds that part contains exempt material.
7. Following assessment of the "working copy set" a new set of documents will be produced comprising the entire "working copy set". This new set will then be marked up to make illegible any part of a document considered to be exempt material. The "marked up" version of the new set will constitute and be known as the "release set".
8. If, in the public interest it is necessary to change the form of the document whilst still preserving its fundamental content to say guard against someone's identity being ascertained by handwriting for example, then such change of form is allowed.
9. The "release set" will then be further copied. The further photocopies of the "release set" will be supplied to the person requesting the documents and the original of the "release set" will be retained by Council as a record of the access provided both in terms of the nature and extent of supplied documents.
10. The person requesting the documents will be provided with a notice setting out the reasons for the denial of access to, or the censoring of part of a requested document.
11. The application form, "working copy set", "release set" and copy of the notice (referred to in 10 above) will be retained by Council as a record of the request and its handling and finalisation.
12. Council will process each request as quickly as resources and the availability of records allow. Council's policy is to store certain records "off site" and there may be a need with particular requests to "call in" such records. Except in instances where the request involves an unreasonable diversion of Council's resources, Council will provide the documents within a period 21 days from the date of receipt.
13. Council will regard all correspondence forwarded to it by third parties as having been supplied to it by those third parties in the expectation that it would be treated by Council confidentially, tactfully or with discretion. As such, while generally it will be appropriate to disclose most of the subject matter of a piece of correspondence to Council, it will only be in exceptional circumstances that the identity of the correspondent would also be disclosed.

14. Council will not advise parties whose correspondence with Council is within the scope of the request documents that a request has been received. Furthermore such parties views will not be sought on the possible release of such information. However such documents will be regarded in the manner set out in point 13 above.

6.1 Preceding Documents - "reasonably accessible"

For the purposes of Section 12(2) and (5) of the Act, a preceding version of a document is regarded as being "reasonably accessible" if its contained on a file or exists in a form which is held on the site of Council's operations within the City (eg. Administration Building, Libraries, Depot, Child Care Centres etc).

Otherwise Council will comply with the request within a period of 7 days from receipt.

7. Inspection of Records

Council does not allow members of the public to inspect its files as our files contain documents which amongst other things include personal details of third parties. We believe that we would be in breach of the Privacy and Personal Information Protection Act 1998 if we allowed people to view these "third party" documents in their entirety.

However, inspection of records approved to be released can take place during Council's "ordinary office hours" which are 9.00 a.m. to 5.00 p.m. Monday to Friday, excluding public holidays. Depending on staffing and security arrangements and at the discretion of the officer to be present during the course of a physical viewing of the documents at the Administration Centre, inspection may be carried out in the one hour period before and after normal office hours, i.e. from 8.00 a.m. - 9.00 a.m. and from 5.00 p.m. - 6.00 p.m. Monday to Friday excluding public holidays. Alternatively, copies of documents approved to be released can be provided to the applicant.

8. Letters and advertisements in the context of Public Notification of Applications for Development Consent

It is Council's practice to include advice to people from whom it seeks comment in respect of development proposal of its policy to provide access to any written submission they make or to any document that records details of their views in respect of the proposal. Such advice will also advise that the person's identity (or anything that would tend to enable that identity to be ascertained) will not be disclosed to applicants for access to information, except to the extent that such disclosure is required by law.

9. Copy Charges

Where Council is legally entitled to impose a charge for the provision of photocopied records, the charge will be the amount set for this service in Council's adopted schedule of Fees and Charges.

10. Councillor Access to Records

Access to records by Councillors is governed by section 9 of Council's Code of Conduct. Councillors should be guided by the Code of Conduct when seeking access to documents.