



information  
and privacy  
commission  
new south wales

# Guideline 3: For local government – personal information in development applications

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## Information Access Guideline 3: Personal Information in Development Applications

The object of the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) is to open government information to the public to maintain and advance a system of responsible and representative democratic government.

The GIPA Act directs agencies to make publicly available, 'open access information', including by requiring agencies to publish certain information on their website. Section 6 of the GIPA Act refers to this as 'mandatory proactive release of certain information', unless there is an overriding public interest consideration against disclosure of the information.<sup>1</sup>

For local councils, open access information relevantly includes development applications (DAs) and information associated with applications, such as submissions by individuals in the local community who wish to object to the proposed development.

Information in the form of DAs and its associated information is prescribed 'open access information' by clause 3 of Schedule 1 to the *Government Information (Public Access) Regulation 2009* (NSW) (**GIPA Regulation**).

The Information Commissioner has issued this guideline under the power given by sections 12(3) and 14(3) of the GIPA Act, to assist agencies regarding the public interest considerations in favour of, or against disclosure of information.

This Guideline is intended to assist local councils to apply the public interest considerations for and against publishing personal information contained in documents associated with DAs on councils' websites.

When considering whether to publish personal information associated with DAs, it is important that councils apply the public interest considerations relating to the treatment of personal information, recognised by clause 3 of the Table to section 14 of the GIPA Act.

Councils should note the significance of applying this public interest test to decisions about publishing this information to the 'world at large'.

The Information Commissioner has consulted the NSW Privacy Commissioner on these privacy-related public interest considerations, as required by section 14(4) of the GIPA Act. Agencies are required to have regard to this guideline issued by the Information Commissioner, in accordance with section 15(b) of the GIPA Act.

Elizabeth Tydd  
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<sup>1</sup> GIPA Act, section 6(1).

## Introduction

Local councils receive and hold a significant amount of personal information collected during the ordinary course of their functions. This includes development applications (DAs) lodged by applicants, and information in the form of submissions or objections to the proposed DA by third parties. Written submissions can contain personal details of the objector to the DA, and the objector's opinions and comments may also contain personal information.

The GIPA Act and the GIPA Regulation require local councils to publish the information they hold about DAs on their websites.

Section 6 of the GIPA Act states that agencies must make certain information, known as open access information, publicly available on the agency's website, and in any other form that the agency considers to be appropriate.

Schedule 1 to the GIPA Regulation places additional open access obligations on local councils, requiring certain information to be made available on councils' websites, and also for inspection and copying at council offices. Of relevance to these Guidelines, clause 3 of Schedule 1 to the GIPA Regulation requires local councils to disclose and publish on their websites information about DAs.

The requirements for the publication of information by councils, including DAs, facilitates greater access to government information. This is particularly relevant to people affected by council decisions about DAs. Open and publicly available information also contributes to transparent decision-making and enables public participation in decisions that affect individuals and the community. However, documents associated with DAs are likely to contain a significant amount of personal information.

The GIPA Act and Regulation provide a framework for balancing open access requirements with public interest considerations against disclosure of personal information. Personal information is treated as a consideration against disclosure, but the fact that open access information contains personal information is not an absolute barrier to its release. Local councils are accordingly required to balance the disclosure of information under the GIPA Act with the privacy protections under the *Privacy and Personal Information Protection Act 1998* (NSW) (**PPIP Act**).

### Note on the scope of the Guideline

This Guideline is intended to assist local councils in decisions about the publication on their websites of personal information that is submitted to councils as part of the DA process. Accordingly, the Guideline deals only with personal information and the publication of that information on council websites.

This Guideline does not deal with or affect councils' obligations generally under the GIPA Act with respect to the disclosure of personal information by means other than publication on council websites. It also does not provide guidance to councils about their disclosure obligations associated with DAs and forms of non-personal information, or any matters pertaining to councils' obligations under the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**) and *Environmental Planning and Assessment Regulation 2000* (NSW) (**EPA Regulation**).

Further, this Guideline does not deal with material that may be protected by copyright. The IPC may publish other guidance about these matters, and when it does so, these are available on the IPC's website.

Councils wishing to consider how to weigh the importance of personal information more broadly, can access *IPC Guideline 4: Personal information as a public interest consideration under the GIPA Act*<sup>2</sup> on the IPC's website at [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

## 1. Legislative approach: disclosure requirements for open access information

1. Part 3 of the GIPA Act is concerned with “open access information” which is government information that is required to be made publicly available by the agency (pursuant to section 6).
2. Section 6 of the GIPA Act requires mandatory proactive release of certain government information that is “open access information” unless there is an overriding public interest against disclosure of the information.
3. Agencies are directed to make open access information publicly available on their website or via an alternative means free of charge.<sup>3</sup> Agencies must publish open access information in the manner prescribed by the GIPA Act or Regulation unless there is an overriding public interest against disclosure (section 6(1)), or if it would involve an unreasonable additional cost to the agency (section 6(2)).
4. Section 6(4) requires that an agency must facilitate public access to open access information contained in a record by:
  - deleting matter from a copy of the record to be made publicly available, if;
  - inclusion of the matter would otherwise result in there being an overriding public interest against disclosure of the record, and it is practicable to delete the matter.
5. Section 18 of the GIPA Act outlines the types of information which comprise an agency's open access information, and this includes “government information as may be prescribed by the regulations as open access information”.<sup>4</sup>
6. Clause 3 of Schedule 1 to the GIPA Regulation (Additional open access information—local authorities)<sup>5</sup> prescribes DAs and information about them within the meaning of the *Environmental Planning and Assessment Act 1979 (EPA Act)* as open access information.
7. For local councils, DA information forms part of their open access information under the GIPA Regulation.
8. Clause 3(1) of Schedule 1 provides as follows:

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<sup>2</sup> Available as at September 2019 at: <https://www.ipc.nsw.gov.au/information-access/information-access-resources-public-sector-agencies/fact-sheets-guidelines-and-other-resources>

<sup>3</sup> GIPA Act, section 6(2).

<sup>4</sup> GIPA Act, section 18(g).

<sup>5</sup> The definition of local authority is provided by Schedule 4 to the GIPA Act and means a council, county council or joint organisation within the meaning of the *Local Government Act 1993*.

### Information about development applications

(1) Information contained in the following records (whenever created) is prescribed as open access information:

(a) development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and any associated documents received in relation to a proposed development including the following:

- (i) home warranty insurance documents
  - (ii) construction certificates
  - (iii) occupation certificates
  - (iv) structural certification documents
  - (v) town planner reports
  - (vi) submissions received on development applications
  - (vii) heritage consultant reports
  - (viii) tree inspection consultant reports
  - (ix) acoustics consultant reports
  - (x) land contamination consultant reports.
- (b) records of decisions made on or after 1 July 2010 on development applications (including decisions made on appeal)

(c) a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).

9. However, the following information is not included in the information referred to as a DA and any associated documents in clause 3(1)(a), with the effect that it is excluded from disclosure under clause 3(2) of Schedule 1:

- (a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and external configuration in relation to the site on which it is proposed to be erected; or
- (b) commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret; or
- (c) development applications made before 1 July 2010 and any associated documents received (whether before, on or after that date) in relation to the application.<sup>6</sup>

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<sup>6</sup>While DAs made before 1 July 2010 (and associated documents of an application made before 1 July 2010) are not prescribed as open access information under the GIPA Regulation, this information is still government information within the meaning of the GIPA Act, and

10. With respect to records of open access information, local councils are also to have regard to clause 1(2) of Schedule 1 which prescribes certain records as open access information. Clause 1(2)(c) requires councils to disclose the minutes of council meetings excluding meetings that are closed to the public, which would include meetings at which planning decisions are made.
11. Disclosure requirements under the GIPA Act and GIPA Regulation provide for a purposeful and context specific application which promotes open and accountable decision-making by agencies. The combined effect of the disclosure requirements under section 6 of the GIPA Act and clause 3 of Schedule 1 to the GIPA Regulation is that local councils make available information on their websites, or for inspection and copying at council offices. These disclosure requirements are designed to ensure that people who are interested in, or potentially affected by development applications, can be informed of proposed developments and are given the opportunity to comment by submissions.

### Personal information contained in DA documents

12. Although the GIPA Regulation lists the records and documents associated with DAs which are prescribed as open access information,<sup>7</sup> it does not specify the type of information that should be published or otherwise disclosed.
13. Information about the subject property of the DA, and information associated with it, are likely to contain a significant amount of personal information to which there may be a public interest against disclosure. Information submitted, or generated in relation to a DA, might typically include:
  - names and addresses of the applicants, owners and people who lodge submissions
  - personal and business contact details
  - signatures of DA applicants and people making submissions
  - photos of property and people
  - financial details of the applicant
  - other personal information included to support an application, or to give weight to an objection.
14. Some of this information is required to be produced as part of the DA planning and assessment process. Other information, such as financial details and photographs of people in their houses, may be contained in documents that are required to be lodged by applicants under law, or in submissions by third parties who are lodging objections to assist their cause.
15. In some cases, personal information should be disclosed as it is integral to the DA decision-making process. In other cases, the information may be of such a personal or sensitive nature that, while still forming part of the DA file, it would be contrary to the public interest for such information to be disclosed on a website. A website is available to the public at large and could be viewed by anyone in the world with access to the internet, and captured by any person by downloading it into other formats.

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can be the subject of an access application. When making a decision to release or refuse access to such information, local councils should apply the public interest test in section 13 of the GIPA Act.

<sup>7</sup> GIPA Regulation, clause 3(1)(a) of Schedule 1.

16. Apart from listing the documents in clause 3(1)(a)(i)-(x) of Schedule 1, the GIPA Regulation does not specify the type of information associated with DAs that must be published or otherwise disclosed. Accordingly, local councils are required to apply the public interest test in section 13 of the GIPA Act when determining which information should be published on council websites. This requires councils to balance the disclosure requirements of the GIPA Act and Regulation (and similar requirements in other laws relevant to DAs), with any considerations against disclosing personal information.
17. The public interest test will apply to the decision to provide information, and a relevant consideration to this, is whether information can be deleted if inclusion of the information would result in there being an overriding public interest against disclosure.<sup>8</sup>
18. The Tribunal in *Donnellan v Ku-ring-gai Council* [2013] NSWADT 115 (at [39] and [42]), accepted that the mobile, home and work telephone numbers, and email addresses of third party objectors to the proposed development was personal information. The Tribunal found that disclosure of this information could reasonably be expected to reveal that information. However, the Tribunal did not consider that the information contained in emails sent by the objectors to the Council was personal information about the objectors. The emails contained the objectors' opinions about the council's consideration of the DA and the zoning of the land subject to the application, and were not about an individual. The fact that the information was sent from their email addresses did not make it personal information.
19. The legal test and considerations that must be exercised when applying clause 3(a) and/or clause 3(b), are discussed in Part 2 of this Guideline.

## 2. The public interest test: considerations for and against disclosure

### Considerations in favour of disclosure

20. When considering whether to publish information which includes personal information, councils should start by considering the general presumption in favour of disclosure of government information in section 5 of the GIPA Act and section 12(1). Government information, as defined by section 4 of the GIPA Act, can include personal information, which means it is also subject to this general presumption in favour of disclosure.
21. The presumption in favour of disclosure is weighted heavily in relation to open access information, where the mandatory requirement for its disclosure in section 6 of the GIPA Act should only be displaced where there is an overriding public interest against disclosure.
22. The note to section 12(2) of the GIPA Act provides a non-exhaustive list of examples of public interest considerations in favour of disclosure:
  - (a) Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.

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<sup>8</sup> GIPA Act, section 6(4).



- (b) Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.
  - (c) Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.
  - (d) The information is personal information of the person to whom it is to be disclosed
  - (e) Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.
23. Proposed DAs are relevant to community interests, and developments can potentially affect or even adversely impact on interested individuals and other parties. The nature of this type of government information that is recognised for mandatory disclosure under the GIPA Regulation, aims to promote public awareness about proposed developments. It also enables interested or potentially affected parties to make submissions or to object to the proposed development.
24. Public disclosure facilitates community participation in government decision-making, and also ensures accountability and transparency of those decisions. These policy considerations, together with the requirements of the GIPA Regulation for mandatory disclosure of DA information, create a framework that clearly supports the public interest in favour of disclosure of such information.
25. Publishing DA information also provides the public with information about the council's decision-making process and identifies the factors which informed or influenced their decision. Councils should also consider that disclosure of the information can help identify potential conflicts of interest. For example, to identify whether the decision-maker is likely to benefit from the decision.

### Considerations against disclosure

26. An exhaustive list of public interest considerations against disclosure is contained in the Table in section 14 of the GIPA Act. The Table lists the only considerations that may be taken into account as a public interest consideration against disclosure.
27. Of relevance to this Guideline, clause 3 in the Table provides for 'individual rights, judicial processes and natural justice' and largely applies to personal information. Clauses 3(a) – (g) provide as follows:

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;
- (b) contravene an information protection principle under the *Privacy and Personal Information Protection Act 1998* or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002*;
- (c) prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings;

- (d) prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness;
- (e) reveal false or unsubstantiated allegations about a person that are defamatory;
- (f) expose a person to a risk of harm or of serious harassment or serious intimidation; or
- (g) in the case of the disclosure of personal information about a child—the disclosure of information that it would not be in the best interests of the child to have disclosed.

28. The GIPA Act gives particular consideration to personal information and defines this type of information in clause 4 of Schedule 4 (interpretative provisions):

(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 can reasonably be ascertained from the information or opinion.

(2) Personal information includes such things as an individual's fingerprints, retina prints, body samples or genetic characteristics.

29. Clause 4(3) of Schedule 4 provides for an exception to this definition:

(3) Personal information does not include any of the following:

(a) information about an individual who has been dead for more than 30 years,

(b) information about an individual (comprising the individual's name and non-personal contact details including the individual's position title, public functions and the agency in which the individual works) that reveals nothing more than the fact that the person was engaged in the exercise of public functions,

(c) information about an individual that is of a class, or is contained in a document of a class, prescribed by the regulations for the purposes of this subclause.

30. For local councils considering open access information in the form of DAs and associated information, the exclusion from the definition of 'personal information' provided by clause 4(3)(b) may have particular significance. For example, this may include the names and positions occupied by officers employed by councils who appear in DAs, construction and other certificates and reports; as well as records of decisions.

31. Clause 1 of Schedule 4 also defines the term "reveal" and states that "reveal information means to disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure)".

32. Under the PPIP Act, the Information Protection Principle dealing with disclosure of personal information is contained in section 18, and section 18(1) states that agencies must not disclose personal information unless:

- (a) the disclosure is directly related to the purpose for which the information was collected, and there is no reason to believe that the person would object to the disclosure, or

(b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or

(c) 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 individual concerned or another person.

33. Further discussion of the disclosure of personal information as a consideration against the publication of information on council websites is discussed at paragraphs [43]-[55], below.

### Applying the public interest test

34. When applying the public interest test to open access information,<sup>9</sup> local councils should undertake the four steps listed below.

1. Consider the presumption in favour of disclosure of information, particularly as it relates to prescribed open access information, and in the case of DAs and associated information, consider the exemptions to the definition of 'personal information' in Schedule 4 of the GIPA Act.
2. Identify other relevant public interest considerations in favour of disclosure of the information, taking into account the general presumption in sections 5 and 12(1) of the GIPA Act, and the examples in favour of disclosure in the note to section 12(2).
3. Identify whether any of the public interest considerations against disclosure listed in the Table to section 14 of the GIPA Act apply to the information in the particular circumstances. Councils should note:
  - only those public interest considerations listed in the Table of section 14 may be taken into account in the decision to not publish the DA information;
  - the relevant public interest consideration against disclosure should reasonably be expected to have the effect in the particular case, or generally.
4. Assess whether the public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure, giving appropriate weight to each consideration. There is an overriding public interest against disclosure of government information only if relevant public interest considerations against disclosure outweigh the relevant public interest considerations in favour of disclosure: section 13.

### NCAT consideration of 'personal information' and development applications

35. The mandatory release requirement in section 6 of the GIPA Act provides a statutory obligation to make open access information, including DAs, publicly available. Councils are under a statutory obligation to make such information publicly available unless there is an overriding public interest consideration against disclosure of the information.<sup>10</sup> This is a significant qualification to the mandatory release requirement in section 6 of the GIPA Act.

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<sup>9</sup> GIPA Act, section 6(1).

<sup>10</sup> *McEwan v Port Stephens Council* [2018] NSWCATAP 211 at [10].

36. The Appeal Panel in *McEwan* (at [45]), confirmed that a decision maker (such as a local council) must carry out the balancing exercise by reference to the implications of the open access feature of the information.
37. In *Donnellan v Ku-ring-gai Council* [2013] NSWADT 115 at [72], the Tribunal explained the obligation in section 6 in the following way:
- ... there is an obligation on an agency to make information of this kind publicly available, regardless of whether an application for access has been made under the GIPA Act. Implicit from these provisions is that the public interest in the disclosure of information of this kind is very strong.
38. The requirement for public disclosure of DAs and associated information, such as by publication on a council website, arises because of the nature of the information, not whether an individual has asserted their right of access to this information under section 9 of the GIPA Act.
39. The requirement on councils is to consider whether any of the public interest considerations against disclosure in the Table in section 14 of the GIPA Act apply to the information.
40. The Tribunal's Appeal Panel has provided the following guidance on dealing with the disclosure of open access information in the form of DAs and associated documents:
- i. the information must fall within the description of information prescribed as open access information in clause 3(1) of Schedule 1 of the GIPA Regulation (that is, be a DA, a document received in association with such an application, or a record of a decision of the agency in regard to a DA); this is a question of fact to be determined in the context of each individual case<sup>11</sup>
  - ii. the starting position is that open access information is an important factor in favour of disclosure, which is additional to other relevant factors in favour of disclosure in section 12 of the GIPA Act<sup>12</sup>
  - iii. the mandatory release requirement in section 6 does not apply when the public interest balance falls against disclosure<sup>13</sup>
  - iv. the claim to the public interest consideration/s against disclosure must be appropriately made so that the decision-maker is satisfied that the balance lies against disclosure<sup>14</sup>
  - v. information contained in DAs or associated documents that is subject to a public interest consideration against disclosure, such as personal information, may be dealt with by redaction prior to publication of the document.<sup>15</sup>

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<sup>11</sup> *Webb v Port Stephens Council (No 3)* [2018] NSWCATAP 286 at [75]-[76].

<sup>12</sup> *McEwan v Port Stephens Council* [2018] NSWCATAP 211 at [42].

<sup>13</sup> *McEwan v Port Stephens Council* [2018] NSWCATAP 211 at [41].

<sup>14</sup> *Webb v Port Stephens Council (No 3)* [2018] NSWCATAP 286 at [79].

<sup>15</sup> *McEwan v Port Stephens Council* [2018] NSWCATAP 211 at [56].

41. In summary, the fact that information is personal to an individual is not an absolute barrier to its disclosure, but is a relevant factor that weighs against release. Certain personal information can be released to give context to the decision, and to promote transparency in decision-making. For example, the information may relevantly identify the objector to the application, but it can also include substantial opinion or comments which are the personal information of the objector.<sup>16</sup>
42. Generally, councils should aim to disclose as much DA associated information as possible and, in applying the public interest test, it should be recognised that personal information may on occasions be disclosed. Disclosure assists the public to understand council decisions about development planning proposals, and the reasons for those decisions. Wherever possible, disclosure should be by the methods set out in the GIPA Act and GIPA Regulation, including through publication on council websites.

### Consideration against disclosure – revealing personal information

43. Disclosing information which reveals an individual's personal information is a public interest consideration against disclosure under clause 3(a) of the Table to section 14 of the GIPA Act, and will apply if disclosure of information "could reasonably be expected" to have this specified effect.
44. Where a council is intending to publish DAs and associated information, the council is required to consider that the personal information of an individual is a relevant factor that can weigh against release where it reveals an individual's personal information. The council should then apply the public interest test in section 13 to the personal information, which requires a balancing test between the public interest consideration in clause 3(a) and the applicable public interest considerations in favour of disclosure.<sup>17</sup>
45. When making a decision to disclose personal information through publication on a website, councils should keep in mind the purpose of the DA disclosure provisions in the GIPA Act and Regulation. These provisions are designed to assist the public to be informed of council decisions, and by promoting public disclosure, ensure transparent council decision-making on DAs. They do not operate to undermine privacy protections by making individuals' personal details available to the world at large. In this regard, there is some information which the Information Commissioner considers should not be disclosed on a website (see Part 3 of these Guidelines).
46. Councils should avoid disclosing material (particularly by publication on a council website) that is malicious or defamatory. This is particularly relevant to submissions or objections made in writing by a person about a DA application which may involve broader neighbourhood grievances or even a campaign targeted at an individual.
47. The GIPA Act provides for a public interest against disclosure of information that could reasonably be expected to expose a person to a risk of harm or of serious harassment or serious intimidation: clause 3(f) of the Table to section 14. This does not necessarily require the information to be personal information, but concerns where disclosure of information may reasonably be expected to have this impact.

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<sup>16</sup> See, *Donnellan v Ku-ring-gai Council* [2013] NSWADT 115 at [41].

<sup>17</sup> *Webb v Port Stephens Council (No 3)* [2018] NSWCATAP 286 at [82].

48. While this consideration against disclosure is available, the Tribunal has confirmed that the “serious” harassment or intimidation is required to be “heavy, weighty or grave, and not trifling or transient”.<sup>18</sup> Accordingly, there may be circumstances where a local council weighs heavily this consideration against disclosure of information, such as if a person’s behaviour demonstrates a risk of harm to another person,<sup>19</sup> or a targeted campaign.<sup>20</sup>
49. Not all information in DA submissions will be relevant to the ultimate development decision made by a council on the DA application, and which should be reported and disclosed. Material that is scurrilous, inflammatory or irrelevant will not be suitable for publication. In disclosing information contained in submissions on a DA, councils should have regard to the object and purpose of disclosure under the GIPA Act to promote transparent and accountable decision-making.

### Consideration against disclosure – contravening the PPIP Act

50. There is a public interest consideration against disclosure of information if the information could reasonably be expected to contravene an Information Protection Principle in the PPIP Act or a Health Privacy Principle under the *Health Records and Information Privacy Act 2002* (HRIP Act)<sup>21</sup> of the Table in section 14 of the GIPA Act). Under the HRIP Act, ‘health information’ means personal information that is information or opinion about, among other things, the physical or mental health or a disability (at any time) of an individual: section 6(a)(i).
51. In determining whether disclosure of personal information would contravene the principles set out under the PPIP Act or HRIP Act, local councils should ask the following questions:
- (a) Is the information being disclosed for the same purpose for which it was collected, or a purpose directly related?
  - (b) Has the person who is the subject of the information consented to the disclosure?
  - (c) Is the public aware that certain types of personal information provided during the DA process may be disclosed, and if so, the type of information and the method of disclosure?
52. If the answer to any of these questions is “yes”, it is unlikely that the disclosure (including by publication on the website) would breach the PPIP Act and/or HRIP Act.
53. However, personal information can be released under the GIPA Act even if this disclosure would breach the PPIP Act. This is made clear by section 5 of the PPIP Act, which provides that nothing in that Act operates to lessen the obligations agencies must exercise under the GIPA Act. Additionally, the name and non-personal contact details of a council officer does not constitute personal information under the GIPA Act.<sup>22</sup>

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<sup>18</sup> *AEZ v Commissioner of Police (NSW)* [2013] NSWADT 90 at [94].

<sup>19</sup> For example, *Dezfouli v Justice Health & Forensic Mental Health Network* [2018] NSWCATAD 11.

<sup>20</sup> For example, *DDT v Charles Sturt University* [2017] NSWCATAD 329; *Pallier v NSW State Emergency Service* [2016] NSWCATAD 293.

<sup>21</sup> GIPA Act, clause 3(b).

<sup>22</sup> GIPA Act, clause 4(3)(b) of Schedule 4; and see, paragraph [29] of this Guideline.

54. There is also an immunity provided under the GIPA Act which protects officers from criminal and civil liability, provided that officers' actions in the exercise of their functions under the GIPA Act, demonstrate they have acted in good faith.<sup>23</sup> Nevertheless, councils should aim to avoid breaching the PPIP Act when disclosing personal information.
55. In summary, councils should take steps to ensure compliance with the PPIP Act and HRIP Act, by notifying people of the type of information submitted with DA applications and in objection letters that will be made publicly available. Councils should also inform the public of how that information will be disclosed, such as on council websites. As outlined above in Part 1, councils should also have regard to the nature of the personal information, including its relevance to the information associated with the DA.

### 3. Personal information that should not be published on council websites

56. The Information Commissioner's guidance to agencies through this guideline affirms that local councils should endeavour to disclose as much DA information on their websites as possible, subject to the application of the public interest test.
57. The Information Commissioner considers the following information is personal information for which there may be an overriding public interest against disclosure:
- personal contact details of an individual, including personal phone/mobile numbers, residential address and email address
  - signatures on DA applications or submissions or objection letters
  - personal financial information, for example, credit card details
  - health and medical information
  - photographs depicting identifiable aspects of the people depicted
  - video and audio content which capture personal information or reveal details about a person.
58. Placing such information on a council website does not further the public interest in transparent government decision-making about DAs for particular properties. The publication of information of the kind listed above would undermine the protection of personal information and individual privacy.

#### Why is publication on a website different to other forms of disclosure?

59. These Guidelines do not intend to limit local councils' disclosure of information in other forms, such as by enabling view only access to the documents in person at council offices, or providing copies of material in electronic or paper form (such as a local newspaper with local or regional distribution).
60. Information made available for public viewing (or copying) in these forms is still subject to the public interest test, but is not 'open to the world at large' in the way that information published on a website is available to the world at large.

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<sup>23</sup> Part 6 of the GIPA Act deals with protections and offences, as well as personal liability of an officer of an agency.

61. Information published in digital form on a website can be accessed by people at any time, and downloaded, copied, modified and republished in various formats. Once published and captured, the information or objections expressed about a proposed development can no longer be controlled, or contained to the original publication context.
62. While the internet can significantly enable the object of the GIPA Act to open and disseminate government information to the public, the risk of failing to balance the GIPA Act's restrictions where there is an overriding public interest against disclosure should not be underestimated in the online information environment.
63. Disclosure of personal information held in electronic records, such as signatures, financial information, and photographs, provides opportunities for identity theft or other criminal acts against the person with very harmful consequences.
64. Online publication of such personal information can be weighted significantly against the public interest in favour of disclosure, having regard to clauses 3(a) and 3(b) of the Table in section 14 of the GIPA Act. The potential to expose a person to a risk of harm from disclosure of such information may also be a relevant public interest consideration, with reference to clause 3(f) of the Table to section 14 of the GIPA Act.
65. Councils need to take a balanced approach to fulfilling their open access obligations and applying the public interest test.



## Document information

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<b>Identifier/Title:</b>	Guidelines for local councils on and personal information contained in development applications: What should not be put on council websites developed under the <i>Government Information (Public Access) Act 2009</i> (NSW)
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<b>Author:</b>	Legal Counsel and Regulatory Advice
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