

Freedom of Information Policy

Policy Endorsement:	Endorsement required by Council		
Policies superseded by this policy:	Not applicable		
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Responsible Officer:	Manager Governance		
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1. Purpose

This Policy has been developed to meet the requirements set out in the *Freedom of Information Act 1982* in regards to 'access to documents'.

2. Background

The Victorian *Freedom of Information Act 1982* (The Act) extends the right of the community to access information in the possession of the Government of Victoria and its 'agencies'. It also provides for the amendment of personal records. Subject to the Act every person has a legally enforceable right to obtain access to information from designated agencies.

Greater Dandenong City Council is a prescribed 'agency' under the Victorian *Freedom of Information Act 1982* and is responsible for assessing and responding to all Freedom of Information requests in accordance with the Act and any professional standards developed by the Information Commissioner under the Act. The information sought by an applicant under the Act must be in written form (book, map, plan, photograph, disc, tape, film) and must be in the constructive possession of the Greater Dandenong City Council.

3. Scope

All employees, Councillors, contractors and volunteers of the City of Greater Dandenong are subject to the legal requirements set out in the Act and are expected to comply with both its objectives and obligations.

Applicants have the right to request any document which is in the "constructive possession" of Council, but access is subject to any possible exemptions as they appear in the *Freedom of Information Act 1982*.

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For a request to be valid, it must be made in writing, clear enough to enable an officer to identify the documents, and it must be accompanied by an application fee as prescribed under the Act.

Under the *Freedom of Information (Access Charges) Regulations 2004* a charge other than the application fee may apply for copies of requested documents.

4. References

- Originally adopted at the Ordinary Council Meeting on 22 February 2010
- Victorian *Freedom of Information Act 1982*
- *Privacy and Data Protection Act 2014*
- *Health Records Act 2001*
- *Public Records Act 1973*
- *Local Government Act 1989*
- *Family Violence Protection Act 2008*

5. Definitions

The 'Act' means the *Freedom of Information Act 1982* for the purpose of this policy.

'Agency' means a department, Council or a prescribed authority.

'Applicant' means a person who has made a request in accordance with section 17 or has applied under section 12(1) of the Act for a statement published by a Principal Officer to be altered.

'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.

6. Council Policy

Greater Dandenong City Council will assess and respond to all Freedom of Information applications received in accordance with the *Freedom of Information Act 1982* and any professional standards developed by the Information Commissioner under the Act.

Applications under the Act must be forwarded to Council in writing. All applications must be accompanied by a statutory application fee in order to validate the request, unless Council has agreed to waive the fee due to financial hardship. Applications may be received on the appropriate application form or by way of letter, email or facsimile which clearly states that it is a request under the Act.

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Section 17 of the Act requires applicants to state their requests clearly enough for relevant documents to be identified and Council has a legal obligation to assist the applicant in doing so. The processing of a request is not required to begin until it is sufficiently specific and clear as to which documents are being sought by an applicant.

All valid requests under the Act must be processed and a written response/decision provided to the applicant within 30 days.

Under Section 21(2)(a) of the Act, an agency may extend the 30 day period for deciding a request if consultation is required under section 29, 29A, 31, 31A, 33, 34 or 35 of the Act. Under this provision, an agency may extend the period by a maximum of 15 days. Under section 21(2)(b) of the Act a 30 day extension may be requested by an agency in any case, if agreed by the applicant.

Council's Freedom of Information Officers are responsible for coordinating each valid request in accordance with the Act. It is the responsibility of individual Council Officers in the relevant departments of Council, as requested by the Council's Freedom of Information Officers, to conduct a thorough and diligent search for all documents falling within each of the requests.

Decision on Access to Documents

Under section 26 of the *Freedom of Information 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 an Instrument of Delegation, this power has been delegated to Council's Freedom of Information Officers.

Based on the provisions of the Act, the decision in each case may be that access is:

- granted in full; or
- granted in part; or
- denied in full.

Council's Freedom of Information Officers, in relation to the provisions of the Act, will decide on any document regarded as possibly exempt and whether it should be released or released with exempt details removed.

An applicant must also be advised if a document has been lost, never existed or has been destroyed.

Application Fee

Under section 17(2A) of the Act, the applicant must pay the prescribed application fee.

Under section 17(2B) of the Act, an applicant may seek a waiver or reduction of the fee if evidence of financial hardship is provided with the request. A suitable example of evidence showing financial hardship would be a current Health Care Concession Card or Pension Card.

Access Charges

Under section 22 of the Act, access charges may also apply for dealing with applications. A charge, other than the application fee, may be made for:

- time spent conducting a routine search;
- costs incurred in supervising the inspection of documents;
- costs incurred in photocopying documents; and
- cost associated with making arrangements to view documents, or to provide a written transcript.

Applicants will be advised of any access charges prior to a decision being released.

Refusal to Process Request

Part IV of the *Freedom of Information Act 1982* provides several categories of information to be exempt from release. The main exemptions are:

- cabinet documents ;
- internal working documents;
- documents affecting legal proceedings;
- documents affecting personal privacy;
- documents containing information obtained in confidence;
- documents relating to trade secrets; and
- documents to which secrecy provisions of another Act apply.

Under section 67(4) of the *Freedom of Information Act 1982* and section 25 of the *Freedom of Information (Amendment) Act 1993*, an applicant who seeks access to Council documents that came into existence before 1 January 1989 is not entitled to receive access (except if the documents contain the personal information of the applicant).

Sections 24, 24A, 25 and 25A of the Act explain the circumstances under which the Greater Dandenong City Council may refuse or defer access to information.

Notification and Consultation requirements

Under sections 33 (personal affairs information) and 35 (information obtained in confidence) of the Act, the agency must notify a person or government, who is the subject of that information, about the request and seek their views as to whether the disclosure of the information should occur.

In 2017, section 33A was inserted into the *Freedom of Information Act 1982* in connection with the *Family Violence Protection Act 2008*.

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Section 33A of the Act states if the person who is required to be notified about a request is a child, Council may notify either or both the child and a parent (guardian).

Council **must not** notify or seek the views of a parent (guardian) of:

- a child who may be subject to family violence; or
- the parent (guardian) is a person of concern or is alleged to pose a risk of family violence to the child.

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 and provide details about the incomplete or incorrect information in accordance with section 40 of the Act.

Right of Review and Complaint Process

Under the *Freedom of Information Act 1982* where an applicant is not satisfied with Council's decision regarding an FOI application, the applicant has a right to apply to the Information Commissioner for a review. The Information Commissioner is able to review decisions where Council:

- refused access to a document under the Act;
- deferred access to a document;
- did not waive or reduce an application fee; or
- refused to amend a personal record.

Applications for review of an FOI decision by the Information Commissioner must be made within 28 days of receiving the decision from Council. There are no fees or costs associated with requesting a review.

The applicant can also complain to the Information Commissioner, if Council:

- made a decision that a requested document does not exist or cannot be located;
- delayed processing an FOI request; or
- any other action taken or failed to be take in performing its functions and obligations under the FOI Act.

A complaint to the Information Commissioner must be made in writing, within 60 days after the date of the action or conduct complained of.

Appeals to VCAT

An application can be made to VCAT to review the following:

- where Council has not made a decision in relation to a FOI request within the statutory time limit (a 'deemed refusal' of Council);
- where the Information Commissioner has not completed a review within the required period (a 'deemed refusal' of the Information Commissioner);
- decisions of the Information Commissioner refusing to grant access to a document in accordance with a request;
- decisions by Council refusing access to a document if the Information Commissioner has determined not to accept or to dismiss the application for review;
- decisions by Council to exempt documents on the grounds of national security; and
- decisions about access charges.

Applications to VCAT for a review should be made within 60 days from the date of receipt of a written notice of a decision. There is no time limit on applying to VCAT in the case of a deemed refusal.

A person who is the subject of information referred to in a document affecting personal privacy (section 33(3) of the FOI Act), or in the case of a deceased person, that person's next-of-kin, can also apply to VCAT for a review of a decision to disclose that document.

A business, commercial or financial undertaking can apply to VCAT for a review of a decision to disclose a document referred to in section 34 of the FOI Act (i.e. trade secrets) contrary to the undertaking's view.

Reporting Requirements

At the end of each financial year, Council is required under legislation to forward a report to the Information Commissioner on the number of FOI requests received. This report includes, but is not limited to, the number of valid and invalid requests received, the number of decisions where an applicant was entitled to access to a document, the provisions under which access was made, the number of times each provision was invoked, details about the FOI officers of Council and the number of decisions reviewed by the Information Commissioner. Council officers will also provide a copy of this report to the Audit Advisory Committee annually and report on FOI activity within the public Greater Dandenong Annual Report.

7. Related Documents

- 'Request for Access to Documents under the Freedom of Information Act' form available on Council's website under **Your Council>Rights and Responsibilities>[Freedom of Information](#)**
- Freedom of Information Frequently Asked Questions document available on Council's website under **Your Council>Rights and Responsibilities>[Freedom of Information](#)**