

## Obtaining Access to Documents and Information held by Council

Access to Council information and documents may be obtained in any of the following ways:-

1. Publicly Available Information

What documents are available?

How do I apply for access?

How much will it cost?

2. Applications under Section 12(6) of the **Local Government Act, 1993**

What documents are available?

How do I apply for access to a document or information?

How much will it cost?

Can I gain access to any document or information?

How long will it take to process my application?

What if access is refused?

Do I have any right to have Council's decision reviewed?

3. Applications under the **Freedom of Information Act, 1989**

What kinds of documents can I access?

How do I apply for access to a document?

How much will it cost?

How long will my application take to process?

Can I gain access to any document(s)?

Can I ask to amend or correct inaccurate records?

What if access or amendment is refused?

Do I have any right to have Council's decision reviewed?

FoI Publication Requirements    [Summary of Affairs](#)    [Statement of Affairs](#)

4. Applications under the **Privacy and Personal Information Protection Act, 1998**  
and the **Health Records and Information Privacy Act, 2002**

What is 'personal information'?

What is 'health information'?

What right of access or amendment do I have?

How much will it cost?

How long will my application take to process?

What if access to my information is denied?

5. Contact & Enquiry Information

Who do I contact about enquiries?

Useful Publications

# 1. Publicly Available Information

## What documents are available?

[Section 12\(1\)](#) of the Local Government Act, 1993 (the LGA) lists those documents which are in general publicly available. These include Council's:-

- Annual Report
- Management Plan
- Pecuniary interest returns of councilors, designated persons and delegates
- Agendas and business papers for council committee meetings and associated minutes
- Policies, procedures and guidelines
- Development applications and associated documents.

A complete listing of the documents and information available may be obtained by following the link at [Section 12\(1\)](#). It should be noted that this right of access is modified by [Section 12\(1A\)](#) of the LGA which states that no right of access exists to the following information:-

- with respect to development applications, or an application under Part 1 of Chapter 7 for approval to erect a building:
  - the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected,
- commercial information, if the information would be likely to:
  - prejudice the commercial position of the person who supplied it, or
  - reveal a trade secret.

## How do I apply for access?

Access to this information may be obtained by visiting Council's offices in Bridge Road, Nowra or Deering Street, Ulladulla or by contacting Council via telephone or in writing. Alternatively, many of these documents can be viewed or downloaded from Council's website at <http://shoalhaven.nsw.gov.au>.

## How much will it cost?

The inspection of public documents is free however a copying charge may apply where copies are required.

## **2. Application under Section 12(6) of the *Local Government Act, 1993***

### What documents are available?

Section 12(6) of the *Local Government Act, 1993* (LGA) provides a right of access to all of Council's 'other documents' (i.e. document/s not listed as publicly available under Section 12(1) of the LGA).

In the course of processing an application and before any decision is made in regard to the disclosure of information, Council may consult with a person or organization ('third party') outside Council. A 'third party' may be consulted where it is considered that the disclosure of a document may adversely affect the personal and/or business affairs of that person or organisation. The identity of the applicant may be disclosed in this process.

### How do I apply for access to a document or information?

A [Document Access Request](#) under Section 12(6) of the *Local Government Act, 1993*, can be downloaded from the website, obtained from Council's offices or forwarded to you on request. Alternatively, you could submit a written or email request to Council ensuring that you include sufficient detail to enable the documents to be identified.

### How much will it cost?

The inspection of documents is free however a copying charge may apply where copies are required.

### Can I gain access to any document or information?

In making a decision in regard to your application Council must consider whether the disclosure of a particular document would be contrary to the public interest. In making this decision it will be necessary to identify and weigh all public interest factors and this will often require the balancing of interests both for, and against, disclosure. Other matters which must be taken into account are contained in Section 12(7) of the LGA and these include.

- personnel matters concerning particular individuals
- the personal hardship of any resident or ratepayer,
- trade secrets,
- a matter the disclosure of which would:
  - constitute an offence against an Act, or
  - found an action for breach of confidence

### How long will it take?

Council will deal with applications as soon as possible and will advise the applicant of the outcome or progress of their application as soon as possible and in any case within 28 days of receipt. (Council's Correspondence Service Standard).

Applications are prioritised having regard to the particular circumstances of the case with consideration also being given to any specific needs of the applicant. Processing times can vary considerably and are influenced by many factors including the nature and volume of current information requests and the need to consult with parties external to Council.

### What if access is refused?

If access to a document is refused (i.e. restricted), you will be provided with the reason/s for that restriction. Your right to apply for access to a document under the Freedom of Information Act, 1989 is unaltered by any restriction placed on a document under the LGA.

### Do I have any right to have Council's decision reviewed?

Yes. In the event of a restriction being placed on all or part of the information requested, you will be advised of the reason/s for that restriction. The written reason/s will also be provided to council and the restriction will be reviewed no later than three (3) months after it is imposed.

Any person may request a further review of the restriction, provided that such request is made after the expiry of a period of three (3) months following the imposition of the initial or any subsequent restriction. Section 674 of the LGA also provides that persons may bring proceedings in the Land & Environment Court for an order to remedy or restrain a breach of the LGA.

## **3. Applications under the Freedom of Information Act, 1989**

The *Freedom of Information (Fol) Act, 1989*, provides members of the public with an entitlement to apply for access to documents held by Council (and other NSW government agencies). The public also have a right to request the amendment of their personal records where they believe information to be incomplete, incorrect, out of date or misleading.

The information brochure titled '[Guidelines for using Fol in NSW](#)' is a useful reference and is available at Council's offices or by contacting the Information Officer.

### What kinds of documents can I access?

The FoI Act enables you to apply for access to any document in Council's possession or under Council's control. This includes paper based documents as well as other types of documents including electronic documents, plans, photographs, video and audio tapes.

### How do I apply for access to a document?

A [Freedom of Information Application](#) form can be obtained from Council's offices or downloaded from the website ([www.shoalhaven.nsw.gov.au](http://www.shoalhaven.nsw.gov.au)).

Requests for access to documents under the FoI Act must be made in writing and be accompanied by the appropriate application fee. Applicants need to provide sufficient detail to enable the correct document/s to be identified and Council can assist with the identification of documents.

### How much will it cost?

The fees and charges are set by the Minister responsible for the FoI Act and are as follows:-

<u>Nature of Application</u>	<u>Application Fee</u>	<u>Processing Charge</u>
Access to records by natural persons about their personal affairs	\$30.00 *	\$30.00 * p/hr after first 20 hrs
Other access requests	\$30.00 *	\$30.00 * per hour
Internal review	\$40.00 *	NIL
Amendment to records	NIL	NIL

\* A 50% reduction in fees and charges may apply to:-

- *children and holders of a Pensioner Health Benefit Card, Health Care Card, War Widows Concession Card or those on equivalent incomes*
- *non-profit organisations demonstrating financial hardship and*
- *matters which are seen to be in the public interest*

The hourly rate covers all costs associated with processing, locating the information, decision making, consultation and photocopying. Large or more complex applications may require the payment of an advance deposit before processing commences. Any such request will be accompanied by a notice setting out the basis on which the advance deposit has been calculated.

### How long will my application take to process?

The FoI Act requires Council to process your application within 21 days from receipt. However, this period may be extended to 35 days where Council decides to consult with third parties, documents need to be retrieved from archives or where special circumstances exist.

With regard to consultation, the FoI Act requires that prior to making any decision in regard to access to a document that may contain information concerning a persons personal or business, Council must first obtain that persons views in order to establish whether or not the document is an exempt document under the Act. This consultation is required in the majority of applications and can increase the overall processing time.

### Can I gain access to any document(s)?

The FoI Act requires that Council provide access to documents wherever possible, however you may be denied access where for example, there is a legitimate need for confidentiality or where access would involve the unreasonable disclosure of information concerning a person's personal affairs.

Sections 22, 25 & 26 of the FoI Act explain the circumstances under which Council may refuse or defer access to information and a detailed list of exemptions is provided in [Schedule 1 of the Freedom of Information Act 1989](#).

The Act also provides for access to be given in a different form that requested. For instance, if a person were to apply for a copy of a particular document and Council received an objection from the copyright owner to the copying of that document, access may only be given by way of inspection.

### Can I ask to amend or correct inaccurate records?

Yes. If you believe any information about you is incomplete, incorrect, misleading, or out-of-date, you have the right to request that it be corrected.

Applications for correction should be lodged in writing with Council and the [Application for Amendment to Personal Records](#) could be used for this purpose.

There are no fees or charges associated with requests for the amendment of records.

### What if access or amendment is refused?

If access to a document(s) or to amend a document is refused, you will be provided with a written determination and this will include the facts and reasons supporting the decision. A statement of costs will also be provided (where applicable).

## Do I have any right to have Council's decision reviewed?

Yes. If you are unhappy with a decision made by Council you are entitled to apply for an internal review of that decision.

Your application should be lodged within 28 days of being advised of that determination or 49 days in the case of an application that has been lodged and no decision has been made.

Another officer within Council will be responsible for the review of your application. If you have applied for an internal review and are unhappy with the result you may refer the matter to the NSW Ombudsman or lodge an appeal with the NSW Administrative Decisions Tribunal.

[Applications for review](#) need to be in writing and accompanied by an application fee (see Fees and Charges above).

Further information in respect of your rights are contained the NSW Premiers Department brochure, '[Reviews and Appeals](#)'. Copies of this document are available on request.

## FoI Publication Requirements

### [Summary of Affairs](#)

Each six months (June & December) Council is required to publish a Summary of Affairs. The summary identifies each of Council's policy documents, provides detail in relation to the Statement of Affairs and identifies the officer in Council to whom inquiries in regard to inspection and/or purchase of documents should be made.

### [Statement of Affairs](#)

In July of each year, Council produces a Statement of Affairs which contains information relating to the:-

- structure and functions of Council
- ways in which these functions can affect members of the public
- arrangements which exist to enable members of the public to participate in the formulation of Council's policies and the exercise of functions
- various kinds of documents held by Council
- arrangements for applying for access or amendment (personal affairs) and Council's documents
- procedures for the giving of access or amendment of documents

#### **4. Applications under the *Privacy and Personal Information Protection Act, 1998* and the *Health Records and Information Privacy Act, 2002***

The objectives of the *Privacy and Personal Information Protection Act, 1998* and the *Health Records and Information Privacy Act, 2002* (in this section referred to as the Acts) are to protect an individuals' privacy, to allow them a degree of control over information held about them by public sector agencies and to provide a mechanism for complaints.

The Acts also provide individuals with a right of access to, or amendment of, their own personal and health information.

##### What is 'personal information'?

Personal information can be described as information or opinion about an individual whose identity is apparent or can reasonably be ascertained from that information. This includes records containing your name, address, sex. etc or physical information like fingerprints, body samples or your DNA.

##### What is 'health information'?

'Health Information' is a specific type of personal information and includes personal information that is information or an opinion about the physical or mental health or a disability of an individual. It also includes personal information about a health service provided, or to be provided, to an individual.

##### What right of access or amendment do I have?

Individuals have the right to be told whether Council holds personal or health information about them, and to be provided with access to such personal or health information in accordance with the Acts.

Individuals also have the right to have their personal and health information amended to ensure it is accurate, relevant, up-to-date, complete and not misleading.

Requests for access to and/or amendment of personal information may be made by using the appropriate form below. These forms may also be downloaded or printed from Council's website.

[Application for Access to Personal or Health Information](#)

[Application for Alteration of Personal Information or Amendment of Health Information](#)

### How much will it cost?

The fees and charges are the same as those applied to any personal requests for information under the Freedom of Information Act, 1989.

<u>Nature of Application</u>	<u>Application Fee</u>	<u>Processing Charge</u>
Access to records concerning a persons own personal affairs	\$30.00 *	\$30.00 * p/hr after first 20 hrs
Amendment of records	NIL	NIL
Review of Conduct	NIL	NIL

\* A 50% reduction in fees and charges may apply to:-

- *children and holders of a Pensioner Health Benefit Card, Health Care Card, War Widows Concession Card or those on equivalent incomes*
- *non-profit organisations demonstrating financial hardship and*
- *matters which are seen to be in the public interest*

### How long will my application take to process?

The length of time taken to process and finalise an application for access will depend largely on the nature of the application and any special circumstances which may exist however Council will take all reasonable steps to ensure information to which you are entitled is provided without excessive delay.

### What if access to my information is denied?

If your application for access to your personal information (under either Act) is refused, you can apply for internal review of the decision.

An officer within Council who was not substantially involved in the original decision will undertake the internal review. If you have applied for an internal review and are unhappy with the result you may refer the matter to the NSW Ombudsman or lodge an appeal with the NSW Administrative Decisions Tribunal.

To lodge a request for internal review the applicant must send their application to Council in writing, and they must specify an address in Australia for correspondence purposes. Council's application form [Privacy Complaint: Internal Review Application](#), may be used for this purpose can be downloaded from Council's website, obtained from Council's offices or forwarded to you on request. No costs apply to an application for internal review.

Further information on the review process and privacy generally is provided in [Council's Privacy Management Plan](#) .

## **5. Contact & Enquiry Information**

Who do I contact about enquiries?

For further information about privacy, freedom of information or other information access issues, please contact the:-

Information Officer  
Shoalhaven City Council  
PO Box 42  
NOWRA NSW 2541

Telephone: (02) 4429 3366  
Email: [mclean@shoalhaven.nsw.gov.au](mailto:mclean@shoalhaven.nsw.gov.au)

### Useful Publications

- [Privacy Management Plan](#)
- [Privacy Code of Practice \(Local Government\)](#)
- [Policy - Public Access to Council Information](#)