

Freedom of Information Policy

EDRMS Object id:	A37215	Directorate:	Corporate Services
Authority:	Council	Responsible Officer:	Team Leader, Governance
Policy Type:	Discretionary	Version No:	003
1 st Adopted by Council	22 February 2010 Minute No. 419	Last Adopted by Council:	12 June 2012 Minute No. 1248
Review Period:	Biennial	Next Review:	June 2014

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* 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.

The City of Greater Dandenong 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. The information sought by an applicant under the Act must be in document form and must be in the constructive possession of the City of Greater Dandenong.

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*.

For a request to be valid it, it must be clear as to what documents the applicant is seeking access to, it must be made in writing 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 be charged for copies of requested documents.

4. References

- Originally adopted at the Ordinary Council Meeting on 22 February 2010
- Victorian Freedom of Information Act 1982
- Information Privacy Act 2000
- Health Records Act 2001
- Public Records Act 1973
- Local Government Act 1989

5. Definitions

‘**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

The City of Greater Dandenong will assess and respond to all Freedom of Information applications received in accordance with the *Freedom of Information Act 1982*.

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.

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 45 days.

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, 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 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

The Freedom of Information Officers, in relation to the provisions of the Act will decide on any document regarded as possibly exempt as to 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.

Greater Dandenong Policy

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.

If supply of information exceeds fifty (50) pages Council will automatically apply access charges in relation to photocopying unless evidence of financial hardship is provided.

Refusal to Process Request

The *Freedom of Information Act 1982* provides for several categories of information to be exempt from release. The main exceptions are:

- Cabinet documents up to 10 years old;
- Some internal working documents;
- Law enforcement documents;
- Documents attracting legal professional privilege;
- 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* 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, 25 and 25A of the Act explain the circumstances under which the City of Greater Dandenong may refuse or defer access to information.

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 individuals own personal affairs that has been previously released to that person.

A request for amendment of personal records must be made in writing in accordance with section 40 of the Act.

Appeals Process

Where an applicant under Freedom of Information is not satisfied with Council's decision regarding an application, the applicant may appeal the decision, which is conducted by an internal review. An internal review must be requested in writing and reviewed by Council within 28 days of receiving the decision. Requests for internal reviews must be addressed to the Principal Officer (Chief Executive Officer), PO Box 200, Dandenong, 3175. Council must respond to the application within 10 working days.

If an applicant is not satisfied with the internal review they may apply for a review by the Victorian Civil & Administrative Tribunal (VCAT) within 60 days of an internal review being conducted.

Reporting Requirements

At the end of each financial year Council is required under legislation to forward a report to the Department of Justice on the number of Freedom of Information request received. This report includes all valid and invalid requests and any request forwarded to another agency for processing.

7. Related Documents

- 'Request for Access to Documents under the Freedom of Information Act' Form available from Council's Website.