

Burwood
Inc.1874

**AGENCY INFORMATION GUIDE –
GOVERNMENT INFORMATION (PUBLIC
ACCESS) ACT 2009**

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Purpose

To provide members of the community and Council Officers with information concerning:

- the structure and functions of the Council
- the manner in which the functions of Council affect members of the public
- any arrangements that exist for members of the public to participate in the formulation of Council's policies and the exercise of Council's functions
- the kinds of government information held by Council
- the kinds of government information held by Council that is publicly available
- the manner in which Council makes government information publicly available
- the kinds of information that are (or will be) made publicly available free of charge and those kinds for which a charge is (or will be) imposed

Note: This document has been produced in accordance with Section 20 of the *Government Information (Public Access) Act 2009 (GIPA)*.

Functions of Burwood Council

The primary responsibilities of Burwood Council are the planning and maintenance of the Local Government Area. Decisions made by the Council directly impact on its residents, land owners and business operators. The actions of all NSW Councils are guided by the *Local Government Act 1993*.

Significant policy, planning and strategic issues are considered and decisions are made by the elected members at a meeting of the Council. Decisions regarding issues of an operational nature or less significance are made under delegated authority by the General Manager or relevant Council Officers.

Under the *Local Government Act 1993* (Section 8) Council must among other things, give consideration to:

1. providing directly, or on behalf of other levels of government, adequate, equitable and appropriate services and facilities for the community
2. ensuring that services are managed efficiently and effectively
3. exercising community leadership
4. exercising its functions in a manner that is consistent with and actively promotes the principle of cultural diversity
5. properly managing, developing, protecting, restoring, enhancing and conserving the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
6. the long term and cumulative effects of its decisions
7. the fact that it is the custodian and trustee of public assets
8. effectively accounting for and managing the assets for which it is responsible
9. facilitating the involvement of Councillors, members of the public, users of facilities and services and Council staff in the development, improvement and coordination of Local Government
10. raising funds for local purposes by way of rates, charges and fees, investments, loans and grants
11. keeping the local community informed about its activities
12. ensuring that, in the exercise of its regulatory functions, it acts consistently and without bias
13. being a responsible employer

Furthermore, Council is required to undertake various service, regulatory, revenue, administrative, enforcement and ancillary functions including:

Service Functions	Provision of community health, recreation, education and information services, Environmental Protection Waste removal and disposal, Land and Property, Industry and Tourism Development and Assistance, Civil Infrastructure, Maintenance and Construction
Regulatory Functions	Approvals, Orders, Building Certificates
Revenue Functions	Rates, Charges, Fees, Borrowings and Investments
Administrative Functions	Employment of Council Officers, Management Plans, Financial reporting, Annual Reports
Enforcement Functions	Proceedings for breaches of Local Government Act and Regulations and other Acts and Regulations, Prosecution of Offences, Recovery of Rates and Charges
Ancillary Functions	As per Section 22 of the <i>Local Government Act 1993</i>

The role of Council, however, extends well beyond these statutory considerations. Council provides an important focus and rallying point for the community. Council can be the vehicle for harnessing local concerns about specific issues, or for pursuing the community's visions and ideas.

Council's Organisational Values

Governance – consultation, accountability, transparency

Service – efficiency, effectiveness, responsiveness

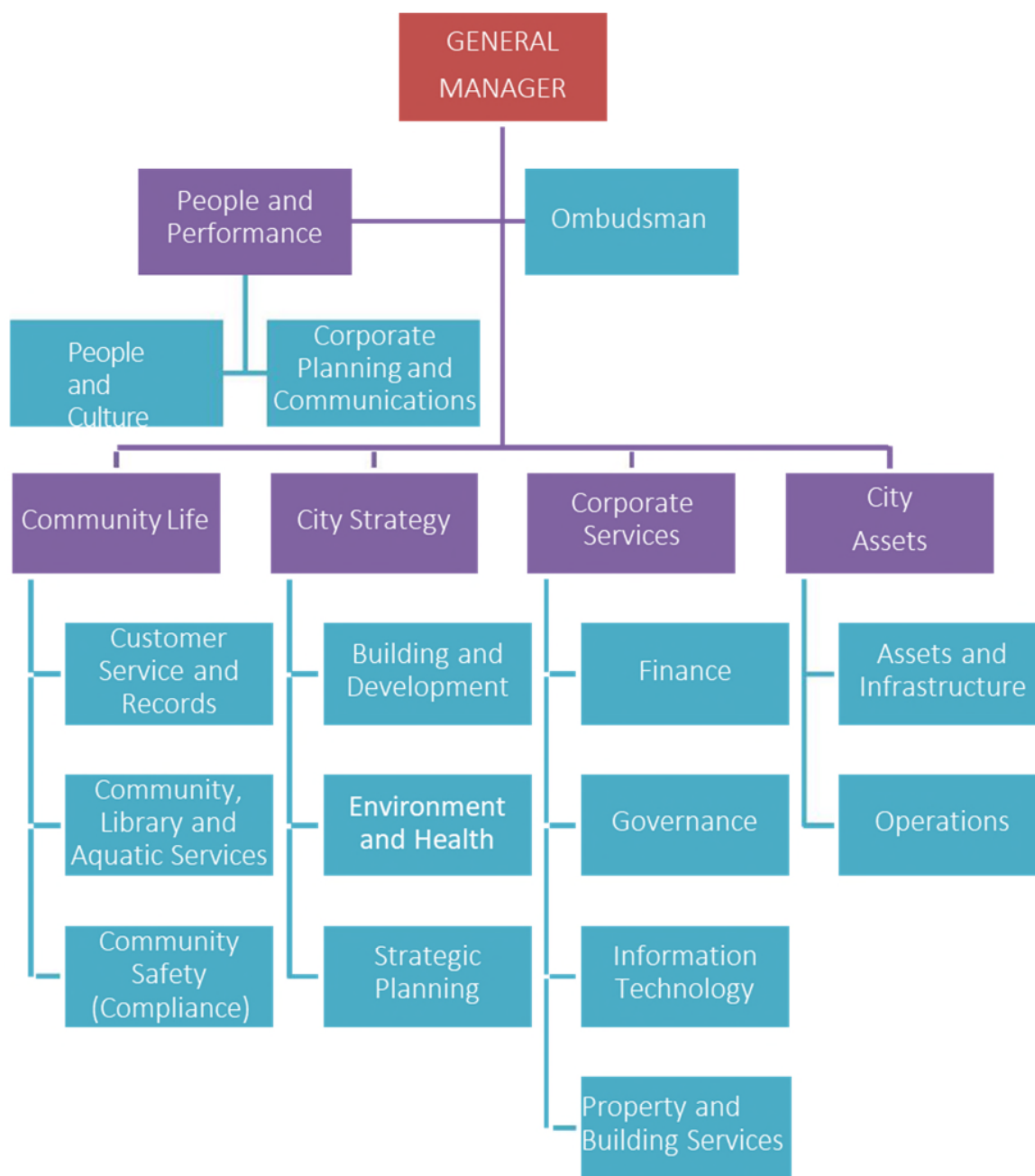
Sustainability – prudence, innovation, preservation

Respect – honesty, fairness, dedication, integrity

Burwood Council's Structure

Description of Council's Organisation Structure

There are six divisions in the organisation, the Office of the General Manager, People and Performance, Community Life, City Strategy, Corporate Services and City Assets. The following Organisation Structure shows the functions of each division.



Effect of Council's Functions on Members of the Public

Most of Council's functions have a direct impact on the public. Council's determination of development applications has legal force in the control of development and building work in the Council area. Council's Integrated Planning and Reporting Plans determine a number of significant projects that will contribute to Burwood being a vibrant major centre in the Inner West, and a leader in the provision of services, in the context of financial and economic sustainability, intergenerational connections, community governance, transparency and accountability.

Council's functions are governed by the *Local Government Act 1993*. Some other Acts and some of the functions they confer include:

ACT	FUNCTIONS
<i>Community Land Development Act 1989</i>	planning functions as consent authority
<i>Companion Animals Act 1998</i>	companion animal registration and control
<i>Conveyancing Act 1919</i>	placing covenants on council land
<i>Environmental Planning and Assessment Act 1979</i>	environmental planning
<i>Fire Brigades Act 1989</i>	payment of contributions to fire brigade costs and furnishing of returns
<i>Food Act 2003</i>	inspection of food and food premises
<i>Impounding Act 1993</i>	impounding of animals and articles
<i>Library Act 1939</i>	library services
<i>Protection of the Environment Operations Act 1997</i>	pollution control
<i>Public Health Act 1991</i>	inspection of systems for purposes of microbial control
<i>Recreation Vehicles Act 1983</i>	restricting use of recreation vehicles
<i>Roads Act 1993</i>	roads
<i>Rural Fires Act 1997</i>	issue of permits to light fires during bush fire danger periods requiring the furnishing of information to the Rural Fire Service Advisory Council and its Co-ordinating Committee
<i>State Emergency Service Act 1989</i>	recommending appointment of local controller
<i>Strata Schemes (Freehold Development) Act 1973</i>	approval of strata plans
<i>Strata Schemes (Leasehold Development) Act 1986</i>	approval of leasehold strata plans
<i>Swimming Pools Act 1992</i>	ensuring restriction of access to swimming pools

The exercise by a council of its functions under the *Local Government Act 1993* may also be modified by the provisions of another Act. Some of these Acts and some of the modifications they affect include:

ACT	FUNCTIONS
<i>Coastal Protection Act 1979</i>	limitation on coastal development by councils
<i>Environmental Offences and Penalties Act 1989</i>	forfeiture of council functions to person appointed by Governor
<i>Government Information (Public Access) Act 2009</i>	council required to publish certain information, to grant access to certain documents and to amend certain records that are shown to be incomplete, incorrect, out of date or misleading
<i>Heritage Act 1977</i>	rating based on heritage valuation
<i>State Emergency and Rescue Management Act 1989</i>	Council required to prepare for emergencies
<i>Unclaimed Money Act 1995</i>	unclaimed money to be paid to the Chief Commissioner of Unclaimed Money

Council has certain reporting requirements to the Department of Planning and Environment, Office of Local Government and the has the role of monitoring the Council's compliance practices.

Arrangements for Public Participation in Policy Formulation

In accordance with the *Local Government Act 1993*, Council is required to advertise some draft policy documents for public comment prior to formal adoption.

The Council and Burwood Local Planning Panel Meeting Agenda is made available to the public for viewing via Council's website and Library. Copies of the Agenda are available at Council's Customer Service Centre and at the meeting.

The Minutes of Council and the Burwood Local Planning Panel Meetings are made available to the public via Council's website www.burwood.nsw.gov.au.

Council and Burwood Local Planning Panel Meetings are open to the public. Anyone wishing to address a Council or Burwood Local Planning Panel Meeting can either apply to speak via Council's Website, email Councilmeetings@burwood.nsw.gov.au or BLPPMeetings@burwood.nsw.gov.au or contact Council's Governance Team on 9911 9911.

Residents are also able to participate directly in Council's affairs by joining one of the advisory committees that manage and provide advice on various Council services and facilities. Advisory Committee membership includes Councillors, community groups and community individuals and provides an opportunity for involvement in policy formulation. Information on advisory committees can be obtained from Council's Community Services Team.

In order to deal with a range of issues, Burwood Council has a number of Advisory Committees, including:

- Burwood Anzac Commemorative Service Committee
- Sandakan Community Educational Committee
- National Servicemen's Association
- Multicultural Advisory Committee

Council occasionally calls public meetings for the purpose of consulting with the community on issues that are controversial or are likely to affect a large part of the community. Public meetings, when called, are advertised to the community by way of a letter to the residents concerned and/or by advertisement in a local newspaper and on Council's Website.

Records and Retention Policy

Documents held by Burwood Council

Electronic Documents and Physical Files

Access to Council's records by members of the public, including *Government Information (Public Access) Act 2009* (GIPA) applications will be in accordance with the applicable legislation, policy and guidelines.

Access to records over 30 years of age and any transferred archives is covered in the NSW State Records Access Directions (State Records website: www.records.nsw.gov.au).

There are a range of processes associated with implementing appraisal decisions. These include the retention, deletion or destruction of records in or from recordkeeping systems. They may also include the migration or transmission of records between recordkeeping systems, and the transfer of custody or ownership of records – Australian Standard AS 4390 Part 1 Clause 4.9.

Key areas that Council uses to classify its records include:

Development and Building Controls - the function of regulating and approving applications for the development, use or subdivision of land or premises and related building and construction works.

Parks and Reserves - the function of acquiring, managing, designing and constructing parks, reserves and open spaces, either owned, controlled or managed by the organisation.

Traffic and Transport - the function of planning for and managing transport infrastructure and the efficient movement and parking of traffic.

Ways of Accessing Government Information

There are four ways in which information may be accessed under the *Government Information (Public Access) Act 2009*, these are:

- a. Mandatory Proactive release - referred to as 'open access information'
- b. Authorised Proactive release of information
- c. Informal release
- d. Formal Access Applications

Open Access Information

The following documents are classified as open access information, some of which can be downloaded from Council's Website www.burwood.nsw.gov.au. If a document listed below is not on Council's website an application to Council to access the information can be requested through an Open Access to Information Application Form which is located on Council's website or you can send an email to council@burwood.nsw.gov.au detailing the documents or files you wish to view and/or photocopy. These applications are free of charge, however, if photocopies are required photocopy charges will apply as per Council's Schedule of Fees and Charges.

Open access information includes:

Information about Burwood Council

The *current version* and *most recent previous version* of the following records:

- a. the model code prescribed under Section 440 (1) of the *LGA* and the code of conduct adopted under Section 440 (3) of the *LGA*
- b. code of meeting practice
- c. annual report
- d. annual financial reports
- e. auditors report
- f. plans that form part of the integrated planning and reporting framework
- g. EEO management plan
- h. policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors
- i. annual reports of bodies exercising functions delegated by the local authority
- j. any codes referred to in the *LGA*

Information contained in the following records (*historical and current*):

- a. returns of the interests of councillors, designated persons and delegates
- b. agendas and business papers for any meeting of the Council (but not including business papers for matters considered when part of a meeting is closed to the public)
- c. minutes of any meeting of Council or any Committee of the Council, 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
- d. departmental representative reports presented at a meeting of the Council in accordance with Section 433 of the *LGA*

Information contained in the *current version* of the following records:

- a. land register
- b. register of investments
- c. register of delegations
- d. register of graffiti removal work kept in accordance with Section 13 of the *Graffiti Control Act 2008*
- a. register of current declarations of disclosures of political donations kept in accordance with Section 328A of the *LGA*
- e. the register of voting on planning matters kept in accordance with Section 375A of the *LGA*
- f. Register of Disclosure by Councillors, Independent Hearing and Assessment Panel and Designated Persons Return

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, is not considered open access information.

Plans and Policies

Information contained in the current version and the most recent previous version of the following:

- a. plans of management for community land
- b. environmental planning instruments, development control plans and contribution plans made under the *Environmental Planning and Assessment Act 1979* applying to land within the Burwood Local Government Area

Information about development applications

Information contained in the following records (*historical and current*):

- 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 on development applications (including decisions made on appeal)
 - c. the plans and specifications to the height and external configuration of a building and other plans such as shadow diagrams and landscape plans
 - d. a record that describes the general nature of the documents that the Council decides are excluded from the operation of this clause by subclause (2)

Information contained in the following records (*historical and current*):

- a. 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, Plans of the internal layout or design of a residential building are not prescribed as open access information, to anyone unless the request comes from the owner.
- b. Council assessment reports and other documents created or received in the course of consideration of a Development Application are not available for inspection prior to the application being determined by Council Officers or Council.
- c. 3D models and electronic format of development applications where available during the public exhibition period (available at Council's Customer Service Centre and Burwood Library and Community Hub).

Policies, Approvals, Orders and Other Documents

Information contained in the following records (*historical and current*):

- a. applications for approvals under Part 1 of Chapter 7 of the *Local Government Act 1993* and any associated documents received in relation to such an application
- b. applications for approvals under any other Act and any associated documents received in relation to such an application
- c. records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals
- d. orders given under Part 2 of Chapter 7 of the *Local Government Act 1993*, and any reasons given under Section 136 of the LGA
- e. orders given under the authority of any other Act
- f. records of building certificates under the *Environmental Planning and Assessment Act 1979*
- g. plans of land proposed to be compulsorily acquired by Council
- h. compulsory acquisition notices
- i. leases and licences for use of public land classified as community land

The following Council documents are also defined as open access information under Section 18 of the *GIPA Act* and will be released without the need for a formal access application:

- Agency Information Guide
- information about Council contained in any document tabled in Parliament by or on behalf of Council, other than any document tabled by order of either House of Parliament
- policy documents
- disclosure log of access applications <https://www.burwood.nsw.gov.au/Our-Council/Access-to-Information/How-To-Access-Information>
- register of government contracts
- records of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure
- any other government information as may be prescribed by the regulations as open access information

Under the *Copyright Act 1968*, a copy of third party documents cannot be provided without the consent of the owner of the document. Copyright is the exclusive right to make copies, license and otherwise exploit a literary, musical, or artistic work, whether printed, audio, video, etc.: works granted such right by law are protected for the lifetime of the author or creator and for a period of 70 years after his or her death.

Note: The fact that information is open access information does not create an obligation to keep records indefinitely and does not interfere with the records management practices and procedures of Council that are consistent with the *State Records Act 1998*.

Decision that Information Already Available to Applicant

An agency can decide that information is already available to an applicant only if the information is:

- a. made publicly available by the agency or some other agency in accordance with a legislative instrument other than this Act, whether or not availability of the information is by inspection only and whether or not availability is subject to a charge, or
- b. available to the applicant from, or for inspection at, the agency free of charge in accordance with this Act or the agency's policies and practices, or
- c. contained in a document that is usually available for purchase

An agency is not required to provide access to information that the agency has decided is already available to the applicant, but notice of the decision must indicate how the information can be accessed by the applicant.

Decision to Refuse to Deal With Application

An agency may refuse to deal with an access application (in whole or in part) for any of the following reasons (and for no other reason):

- a. dealing with the application would require an unreasonable and substantial diversion of the agency's resources
- b. the agency has already decided a previous application for the information concerned (or information that is substantially the same as that information) made by the applicant and there are no reasonable grounds for believing that the agency would make a different decision on the application
- c. the applicant has failed to pay an advance deposit that is payable in connection with the application

- d. the information is or has been the subject of a subpoena or other order of a court for the production of documents and is available to the applicant as a result of having been produced in compliance with the subpoena or other order

In deciding whether dealing with an application would require an unreasonable and substantial diversion of an agency's resources, the agency is not required to have regard to any extension by agreement between the applicant and the agency of the period within which the application is required to be decided.

In deciding whether dealing with an application would require an unreasonable and substantial diversion of an agency's resources, the agency is entitled to consider two or more applications (including any previous application) as the one application if the agency determines that the applications are related and are made by the same applicant or by persons who are acting in concert in connection with those applications.

Before refusing to deal with an access application because dealing with it would require an unreasonable and substantial diversion of an agency's resources, the agency must give the applicant a reasonable opportunity to amend the application. The period within which the application is required to be decided stops running while the applicant is being given an opportunity to amend the application.

Notice of an agency's decision to refuse to deal with an access application must state the agency's reasons for the refusal.

An applicant is not entitled to a refund of the application fee when the agency refuses to deal with the application.

Clause 3 of Schedule 1 to the *Government Information (Public Access) Regulation 2018* prescribes additional open access information of councils. Such information now excludes the following about development applications:

- records of decisions made before **1 July 2010** on development applications (including decisions made on appeal) (Sch. 1, clause 3(1)(a)(i) and clause 3(1)(b)),
- development applications made before **1 July 2010** and any associated documents received (whether before, on or after that date) in relation to the application (Sch. 1, clause 3(2)(c)).

To apply for the information, please refer to Formal Access Applications in this Guide which details the process and fees associated with Formal Access Applications.

Proactive Release Program

The Proactive Release Program refers to information that Council choose to release proactively, which is in addition to the information that Council must disclose under Section 6 of the *Government Information (Public Access) Act 2009*.

The Program is reviewed in accordance with legislation to identify the types of information that could be released and what information Council has released as a result of the review.

During the last review period the Council has added the following to its website:

- Application Tracker – a tool to access information regarding development applications, construction certificates, complying development certificates and occupation certificates
- Details (by suburb) of development applications that have been determined
- In accordance with Clause 1(2)(a) of Schedule 1 of the *Government Information (Public Access) Regulation 2018*, copies of the disclosure of interest returns of councillors and designated persons

- Voluntary Planning Assessment Register developed in accordance with requirements under Section 25F of the *Environmental Planning and Assessment Regulation 2000*.

All Other Information

Formal Access Applications

Burwood Council endeavours wherever possible and appropriate to deal with requests for information informally. We encourage you to seek information first by searching Council's website, and then via an informal request (which does not usually require the payment of charges). Not all applications can be treated informally but the vast majority can be.

It may be necessary to submit a Formal Access Application if the information you are seeking:

- is of a sensitive nature
- contains personal or confidential or commercially sensitive information about a third party
- would involve a considerable amount of time and resources to assemble
- is of uncommon complexity
- records of decisions made before **1 July 2010** on development applications (including decisions made on appeal) (Sch. 1, clause 3(1)(a)(i) and clause 3(1)(b) of the *Government Information (Public Access) Regulation 2018*)
- development applications made before **1 July 2010** and any associated documents received (whether before, on or after that date) in relation to the application (Sch. 1, clause 3(2)(c) of the *Government Information (Public Access) Regulation 2018*)

If you have not been able to obtain the information you require through Council's website or an open access application, you can lodge a Formal Access to Information Application. A form is required to be completed which can be located on Council's website or at Council's Administration Centre.

Requests for Formal Access to Information held by Burwood Council and subject to the *Government Information (Public Access) Act* must be accompanied by a \$30.00 application fee. There is also a processing charge of \$30.00 per hour calculated after the first hour. An applicant is entitled to a 50% reduction in processing charges imposed by Council if Council is satisfied that the applicant is suffering financial hardship under Section 65 of the *GIPA Act*. Hardship applications will be required to complete Council's Hardship Policy application. The discount applies only to the processing charge, not the application fee. If a 50% reduction in processing charge applies, the application fee will pay the first two hours of processing time.

If a Formal Access to Information application is made for personal information about the applicant (the applicant being an individual), there are no processing charges for the first 20 hours of the processing time for the application.

Where the processing time exceeds 10 hours an advanced deposit charge will apply. If copies of documents are required, photocopying charges will apply as per Council's Schedule of Fees and Charges.

Council may request this type of application where the information sought:

- is of a sensitive nature that requires careful weighing of the considerations in favour of and against disclosure
- contains personal or confidential information about a third party that requires consultation
- would involve an unreasonable amount of time and resources to update

Decisions as to the release of requested information that is not available on the Council's website or in other publications are made within the guidelines of *GIPA*, taking into consideration the factors relating to exemptions and public interest.

Time Limits

In respect of all applications, Council will notify applicants of the decision on an application within 20 working days. Council may request the applicant to agree to extend the time by up to 15 working days where consultation with a third party is required or if Council needs to retrieve records from archives.

If access is deferred by Council, then Council will notify the applicant and include the reason for deferral and the date on which the applicant will be given access. Council may defer the application if the information or document has by or under this Act or some other legislative instrument, required to be published but is yet to be published for public information.

A decision to defer access is reviewable (see Rights of Review and Appeal). If Council does not decide the applicant's access application within the above timeframes, it is deemed 'refused'. Council will refund the application fee and the applicant may seek an internal or external review (see Rights of Review and Appeal) of this refusal. This will not apply if an extension of time has been arranged or payment of an advance deposit is pending.

Council may refuse to deal with an application (in whole or in part) for the following reasons only:

- dealing with the application would require an unreasonable and substantial diversion of Council resources
- Council has already decided a previous application for the information concerned made by the applicant and there are no reasonable grounds that Council would make a different decision on the application
- the applicant has failed to pay an advance deposit that is payable in connection with the application
- the information is or has been the subject of a subpoena or other order of a court for the production of documents and is available to the applicant as a result of having been produced in compliance with the subpoena or other order

Rights of Review and Appeal

Where a member of the public is refused access under the *GIPA Act*, Council Officers will provide details of the reasons for refusal to the member of the public in writing. An applicant who has been refused access by Council to information requested under a formal request for access to information under the *GIPA Act* has three options of review available:

1. Applicants can apply to Council for an internal review. The review is conducted by someone more senior than the original decision maker and there is a \$40.00 fee. Applicants have 20 working days from receiving notice of a decision to ask for an internal review.
2. If an applicant is not satisfied with the internal review, or does not want one to be conducted by Council, they can ask for a review by the Information and Privacy Commission. Applicants have eight weeks from being notified of a decision to ask for this review.
3. If an applicant is not satisfied with the decision of the Information and Privacy Commission or the internal reviewer or if they do not want to take these options they can apply to the NSW Civil and Administrative Tribunal (NCAT) for a determination.

It is noted that there are no rights of review in respect of open access applications, but the applicant may make a formal application at any time.

To make a request for an Internal Review under the *GIPA Act*, the 'Internal Review Application Request Form' is available on Council's website or at Council's Administrative Centre.

Please note all application forms may be downloaded from Council's website under Access to Council Information.

Access Arrangements, Procedures and Points of Contact

The information listed as available in this document is not an exhaustive listing. Inquiries for information can be arranged through contacting Council's Customer Service Centre during office hours. Inquiries can be directed to Council's Governance Officer. For Access to Information on Council's website click here: www.burwood.nsw.gov.au.

Governance Officer
Burwood Council
PO Box 240
BURWOOD NSW 1805

Burwood Council is located at 2 Conder Street, Burwood and is open between 8:30am and 4.45pm Monday to Friday.

Phone: (02) 9911 9911
E-mail: council@burwood.nsw.gov.au
Website: www.burwood.nsw.gov.au

Information and Privacy Commission

If you require further information regarding the *Government Information (Public Access) Act 2009*, you may contact the Information and Privacy Commission (IPC) as follows:

Internet: www.ipc.nsw.gov.au
Email: ipcinfo@ipc.nsw.gov.au
Freecall: 1800 472 679
Mail: GPO Box 7011, Sydney NSW 2001
Office: Level 17, 201 Elizabeth Street Sydney NSW 2000

Related Information/Glossary

- *Proactive Release Program*
- *Government Information (Public Access) Act 2009*
- *Government Information (Public Access) Regulations 2018*
- *Government Information (Information Commissioner) Act 2009*
- *Privacy and Personal Information Protection Act 1998*
- *Health Records and Information Privacy Act 2002*
- *Environmental Planning & Assessment Act 1979*
- *Local Government Act 1993*
- *State Records Act 1998*
- *Copyright Act 1968*
- *Graffiti Control Act 2008*
- *Corporations Act 2001*

Review

The Agency Information Guide will be reviewed every 12 months as per legislative requirements.

Contact

Governance Officer
9911 99911