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The Director, Justice Policy
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Dear Sir

Submission on the Review of the Government Information (Public Access) Act 2009

Council welcomes this opportunity to provide the attached submission in relation to the review of the GI(PA) Act.

Gosford City Council supports the object of the Act and has adopted the proactive release of its public information, however I hope you will give attention to the matters set out in our submission. I look forward to hearing about the changes proposed as a result of this review.

Should you require any further information regarding the attached submission or Council's application of the GI(PA) Act, please contact Shane Sullivan, Manager Governance and Business Services on 02 4325 8326.

Yours faithfully

Paul Anderson
Chief Executive Officer

Open Government Information - SUBMISSION BY GOSFORD CITY COUNCIL	
Division 1 Accessing Government Information	Review Comment
<p>(1) An agency must make the government information that is its <i>open access information</i> publicly available unless there is an overriding public interest against disclosure of the information</p> <p><u>Schedule 1 Additional open access information—local authorities (Regulation 2009)</u></p> <p>3 - Information about development applications</p> <p>(1) Information contained in the following records (whenever created) is prescribed as open access information:</p> <p>(a) development applications (within the meaning of the <u>Environmental Planning and Assessment Act 1979</u>) and any associated documents received in relation to a proposed development including the following:</p>	<ul style="list-style-type: none"> Development related information is identified as 'open access' which must be provided free of charge. <p>Council receives 1200 application requests per year for this category of information. It is our experience that many applicants are unsure of the precise information they require therefore request all information relating to a development.</p> <p>Although the Act does have provisions to negotiate with the applicant this process can result in lengthy communication and still require significant amount documents and take considerable time to research and co-ordinate, particularly if there is a third party consultation involved.</p> <p>Council suggests that 'open access' be qualified by a timeframe such as 5 years, with information older than this period being provided as 'historical' under a formal request allowing Council to apply a processing charge to assist with administration related expenses while benefiting the applicant as formal requests have specified timeframes and rights of appeal.</p> <ul style="list-style-type: none"> Applying a timeframe for open access information would also assist both Council and the applicant in understanding how much open access information should remain available on Council's website.

Application Fees and Charges	
Division 5 Processing charges and advance deposits	Review Comment
<p>64 <u>Processing charge for dealing with access application</u></p> <p>(1) An agency may impose a charge (a processing charge) for dealing with an access application at a rate of \$30 per hour for each hour of processing time for the application.</p>	<p>The Act makes provision for Council to charge a processing fee of \$30 per hour, for each hour. Considerable time is required to efficiently process application requests such as consultation and researching records.</p> <p>As it is now 5 years since the Act was introduced Council suggests the Processing Fee be increased to \$50 per hour, every hour, and that the Application Fee of \$30 also be increased to \$50.</p> <p>Although these charges do not fully compensate Council, it will assist while encouraging the applicant to be more specific in their requests.</p>
Application Refunds	
Division 5 Deciding access applications	Review Comment
<p>71 Refund of advance deposit</p> <p>(2) An applicant is entitled to a refund of any advance deposit paid if the agency does not decide the access application within time.</p>	<p>As resources would have already been deployed to preparing the application Council suggests that perhaps a sliding scale could be applied should Council not decide the application within time.</p> <p>For example: 25% of monies could be refunded if a decision is delayed by 1 week and 50% for 2 weeks.</p>

Application Requests Decisions	
Division 4 Deciding access applications	Review Comment
<p>60 Decision to refuse to deal with application</p> <p>(1) 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):</p> <p>(a) dealing with the application would require an unreasonable and substantial diversion of the agency's resources.</p>	<p>Council suggests that 'unreasonable' and 'substantial diversion of council resources' are ambiguous terms and should be qualified with a specified timeframe i.e. a processing time of over 30 hours.</p> <p>This can be applied at the discretion of the council depending on the resources available at the time of the request.</p>

Federal Copyright Act vs. GIPA Act

The intent of GIPA is to authorise and encourage the proactive release of government information. Conversely, the Copyright Act restricts the release of much of the information held by Council without firstly obtaining written permission of the copyright owner.

In many situations locating the owner can be an arduous task prolonging the process of providing information.

The Australian Law Reform Commission (ALRC) in their report 'Copyright and the Digital Economy' Recommendation 15-4 '*The Copyright Act should provide for a new exception for uses where statutes require local, state or commonwealth governments to provide public access to copyright material.*' -

Council supports the Australian Law Reform Commission (ALRC) recommendation and strongly encourages the Attorney General to continue to campaign to have the recommendation 15-4 amended accordingly.