

CUSTOMER & COMPLIANCE

Public Interest Test

Publication of Disclosure of
Interests Returns on
Council's website

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Introduction

Under section 6(1) of the GIPA Act, Council must make the government information that is its 'open access' information publicly available unless there is an overriding public interest against disclosure of the information.

On 26 September 2019, the Information & Privacy Commission (IPC) issued *Guideline 1: For local councils on the disclosure of information contained in returns disclosing the interests of councilors and designated persons* (Guidelines 1) which requires the publication of Disclosure Returns on Council's website unless there is an overriding public interest against disclosure.

1. Considerations in favour of publication of Disclosure Returns on our website

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information.

Potential considerations in favour of disclosure;

- a) Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.
- b) Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.
- c) Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.
- d) Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.

The publication of Disclosure Returns promotes these public interest considerations by furthering openness, transparency and accountability in local government. These are key principles underpinning the Local Government Act 1993 and are recognised as good governance principles for public sector organisations. Disclosing the Returns is one measure that protects the integrity of Councils' decision-making processes by allowing scrutiny of potential conflicts of interests that would arise where Council officials participate in decision making from which they or their close associates may derive, or be perceived to derive, personal or financial benefit.

To assist members of the public to have confidence that potential conflicts of interest are avoided, they should have sufficient information about the areas of conflict. In this respect, disclosure of the information contained in the Returns is an important element in promoting public accountability.

2. Considerations against publication of Returns on our website

When applying the public interest test, the only public interest considerations against disclosure that can be taken into account are those set out in the Table to section 14 of the GIPA Act. The considerations detailed below are relevant to this matter.

2.1. Responsible and effective government

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to prejudice the effective exercise by an agency of the agency's functions (Table 1(f)).

Section 8A of the LGA sets out the guiding principles that apply to the exercise of functions and decision making by councils and include the following:

- Councils should act fairly, ethically and without bias in the interests of the local community;
- Councils should be responsible employers and provide a consultative and supportive working environment for staff;
- Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

The re-release of IPC Guideline 1 has prompted the Office of Local Government (OLG) to review its approach to the interpretation of those required to lodge Returns. The advice now provides a much narrower interpretation of the Model Code provisions than had previously been the case and practice within the local government industry. Of particular relevance is the OLG advice that;

“Councils should weigh up the risk that the requirement to publish returns of interests is designed to address to ensure that this is a proportionate mitigation of that risk. This assessment should be based on a consideration of the nature, responsibilities and functions of a role or a committee and the type and level of delegations it exercises.” “Positions or committee memberships involving the performance of low-level administrative or regulatory functions that carry limited or no discretion or financial delegations, should not be identified as positions of designated persons.”

In applying the provisions of the Model Code, the ELT has determined to embrace a broad interpretation of the return lodgment requirements and definition of designated officers. The broader approach promotes good governance as more positions of influence, providing advice or exercising delegated authority are required to lodge Returns including planners, regulatory staff, procurement officers etc.

2.2. Individual rights, judicial processes and natural justice

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- reveal an individual's personal information (Table 3(a)),
- expose a person to a risk of harm or of serious harassment or serious intimidation (Table 3(f)).

Disclosure of personal information held in electronic records, such as signatures, financial information and photographs, provides opportunities for identity theft or other criminal acts against a person with very harmful consequences.

Information made available for public viewing (or copying) at Council Office is not accessible to the world at large in the way that information published on a website is available. Information published in digital form on a website can be accessed by people at any time, and downloaded, copied, modified and republished in various formats. Once published the information can no longer be controlled. The GIPA Act, in fact, recognises that there may be a risk (including the potential to expose a person to a risk of harm) in publishing some types of information in the online information environment.

3. Outcome and weighing considerations

In terms of risk management, it certainly is foreseeable that disclosing the type and combination of information contained in the Returns on Council's website could expose a person to harassment and intimidation, and potentially serious harm or identity theft. This consideration is recognised as a significant factor against disclosure.

Council receives a minimal number of requests for inspection of the Returns (3 requests have been received in the last 5 years, 2 of which were from the media). The placement of the Returns on our website will expose a significant number of Council officials to uncontrolled broad scrutiny of personal information, fishing expeditions and, potentially, personal vendetta. In addition, the access to personal identifying information, particularly home addresses is bound to be concerning for staff with families and who may be fearful of ramifications if a member of the public is disgruntled with a particular staff member. The reality is the cause of that ill will may not necessarily be related to their employment with Council, which makes the accessibility of information via the Council website all the more concerning, the ramifications of which could be far more complex and far reaching than the intent behind the GIPA legislation.

In the original IPC Guideline 1 Council were encouraged to note clearly on their website that the returns are available for inspection at Council offices during ordinary business hours. It held that releasing information in this manner "facilitates the legitimate public interest in having access to the information, while protecting the individual's right to privacy and safety".

The publishing of this information on a website provides no additional probity or transparency to any local government process but significantly impinges on individual privacy rights. The website provides the availability of the Returns, and potential exposure of the personal information contained within them, to an unrestricted audience. This is balanced against the minimal number of genuine requests received by Council to view the returns. The unnecessary risk exposure to Council officials by placing the returns on the website does not equate to the current public demand to view the returns at Council offices.

The Returns, by their very nature, contain a significant amount of personal information relative to the other open access documents. The type of open access information required by the GIPA Act to be published on the web is a factor that should be taken into account and, in this case, is a factor against disclosure. It is considered unreasonable to require Council officials to sacrifice their legitimate right to privacy and protection given that the purpose of the returns as a public accountability measure can be equally fulfilled by the current practice of making them available for inspection in a controlled environment at Council offices.

Consideration has been given to placing the Returns on our website with signatures and place of residences redacted, however, there is further information in the returns that could reveal an individual's personal and business affairs.

It is recommended that Council adopt the position that there is an overriding public interest against disclosure of the Returns on our website.

4. Decision

Upon considering the above public interest test Council's Executive Leadership Team resolved as follows:

- that Council publish the Disclosure Returns on its website, subject to all information being redacted apart from the names and positions of Councillors, senior staff and designated officers, along with advice that unredacted Returns may be viewed free of charge at the Council Administration Office.

