

# Privacy and Freedom of Information

## Council Policy 135



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### 1. Purpose

To establish how the MacDonnell Regional Council (MRC) manages and uses personal information and provides access to government and personal information, in accordance with the Information Act (NT) (the Act) and in particular the Information Privacy Principles (IPP).

### 2. Scope

This policy applies to MRC elected members, local authority members, employees, contractors and volunteers of MRC. It covers records of MRC business and personal information collected by MRC through which an individual's identity is apparent or could reasonably be attained. This policy covers information collected in any format including correspondence, in person, over the phone, and over the internet.

The Northern Territory's Information Act (the Act) took effect 1 July 2003 and impacts the way Northern Territory public sector organisations collect, use and store government and personal information. Under the Act as in force at 12 April 2017 and for the first time in Australia, the related issues of freedom of information (FOI), privacy and records and archives management are brought together.

### 3. Objectives

This objectives of this policy are to comply with the Act:

- as it intends to strike a balance between competing interests by giving members of the Territory community a right of access to government information with limited exceptions and exemptions for the purpose of preventing a prejudicial effect on the public interest as described in subsection (1)(a)(ii) of the Act; and
- to provide information and guidance to MRC staff in the use of personal information and the handling of information requests under the Information Act as MRC collects, manages, uses and discloses personal information.

### 4. Statement

The Act is designed to promote the protection of personal information and the free flow of government information, subject only to the need to protect essential public interests and the private and business interests of persons.

#### 4.1 Background

4.1.1 The Act has four main components, namely:

- right of access to government information, including personal information, except where an exemption applies;
- the appointment of an Information Commissioner;
- effective and responsible record keeping and records management; and
- protection of personal information in the public sector by application of Information Privacy Principles (IPPs).

4.1.2 The Act does not replace other procedures for accessing information or limit access to government information (other than personal information) that is already publicly available.

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- 4.1.3** The Act creates a legal right of access to government and personal information held by government, including the right to request correction of personal information where a person believes information regarding them is incorrect, inaccurate or out of date. This right of access is limited if disclosure of particular information would be contrary to the public interest and have a prejudicial effect on essential public interests or on the private or business interests of other persons.
- 4.1.4** Freedom of information (FOI) gives a person the right to apply for access to local government information, and the right to apply to view and correct personal information held by local governments.

## **4.2 Privacy**

The Privacy scheme in the NT Information Act is about making sure that NT public sector organisations respects the individual's privacy when they collect or handle personal information.

- 4.2.1** The rules for protecting privacy are set out in 10 Information Privacy Principles (IPPs) that appear in the Schedule at the end of the Information Act. The requirements of the IPPs can be divided into four categories:
  - 4.2.1.1** Collection of information
  - 4.2.1.2** Use and Disclosure
  - 4.2.1.3** Management of information
  - 4.2.1.4** Openness
- 4.2.2** MRC collects a range of personal information in the course of its work. This includes information about clients it services under its youth, child and home care services as well as information about elected members, employees, contractors and volunteers.
- 4.2.3** A person has the right to make a complaint if s/he suspects that an IPP has been breached.
- 4.2.4** The following applies to Council's approach to privacy and private information:
  - 4.2.4.1** MRC respects the right of an individual to have their privacy protected and commits to complying with the Act and the Information Privacy Principles;
  - 4.2.4.2** the collection of personal information must be compliant with the Information Privacy Principles under the Act;
  - 4.2.4.3** MRC Executive and Managers are responsible for applying the IPPs in their daily roles;
  - 4.2.4.4** MRC will take reasonable steps to protect the personal information it holds from misuse and loss and from unauthorised access, modification or disclosure; and
  - 4.2.4.5** Personal information will be stored in a secure place in the Council section that uses that information. Personal information may also be stored by council in electronic form which is password protected.

## **4.3 Access to Information**

- 4.3.1** Council employees will only have access to personal information on a "need to know basis" and to the extent that is required for them to carry out their duties.

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- 4.3.2** Requests for access to personal or government information from any person other than employees in the course of their duties must be made according to section 18 of the Information Act.

#### **4.4 Freedom of Information requests - Guidelines**

- 4.4.1** The MRC will appoint an officer to the role of Records Officer, who will handle freedom of information requests. This role will handle all applications for information under the Act. Delegations for approving actions under the Act will be according to the Delegations Manual.
- 4.4.2** Fees and charges for applications and processing of requests, if applied, will be as set in the MRC Fees and Charges in the Regional Plan. The Schedule to the Information Regulations sets out how the processing fee is calculated (s 156(4) (a)).
- 4.4.3** Under a FOI request members of the public can apply to:
  - 4.4.3.1** access government information
  - 4.4.3.2** access personal information
  - 4.4.3.3** correct personal information
  - 4.4.3.4** seek an internal review of a decision.
- 4.4.4** Government organisations such as MRC must provide the information unless one of the specific refusal reasons set out in the Information Act apply.
- 4.4.5** These reasons can be that:
  - 4.4.5.1** the information is already publicly available
  - 4.4.5.2** it's not in the public interest to do so
  - 4.4.5.3** the information is subject to an exemption.
- 4.4.6** MRC must give a written reasons for its decision. If applicants disagree with the outcome, they can seek a review of the decision.
- 4.4.7** The two types of exemption (see below) require different approaches.
  - 4.4.7.1** No public interest test (sections 45-49C). If information satisfies the requirements of the exemption its disclosure is generally considered to be against the public interest. It will be exempt even if there are public interest considerations favouring disclosure.
  - 4.4.7.2** Public interest test (sections 51-58). Even if the information satisfies the requirements of an exemption, it will only be exempt if, in the particular case, the public interest considerations against disclosure outweigh the considerations favouring disclosure.
- 4.4.8** Public interest factors that can go against disclosure. Public interest factors that go against disclosure can be grouped into one of the following categories:

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- 4.4.8.1** Public interest test require some harm to be shown before the information fits into that exemption.

As an example, the exemption for information that would "pose a serious threat to the life or health of a person" points to an obvious underlying public interest factor against disclosure.

- 4.4.8.2** Efficient and effective conduct of government operations.

If disclosure of particular information would prejudice the ability of government to carry out its functions on behalf of the community in an efficient and effective way, this will give rise to a public interest factor against disclosure.

However, care must be taken to ensure that there is sufficient evidence to establish the prejudice. Mere reluctance to release information on the part of some officers is not a sound basis for such a finding.

NB: The need to maintain efficient and effective conduct of government operations is not an exemption in itself. It is one factor that may need to be taken into account in a public interest balancing test. It can only arise for consideration if the elements of an exemption have been satisfied.

- 4.4.8.3** Private interests (Fairness to an individual)

A public interest factor may also arise in terms of ensuring fairness to an individual or private sector organisation, if, for example, there are allegations of wrongdoing in a document that are untested, or in relation to which there has been no chance for response.

- 4.4.8.4** Factors that can't be raised as public interest factors.

The Information Act excludes 3 things from consideration:

- 4.4.8.4.1** the reasons that access is being sought (s.17);

- 4.4.8.4.2** the possibility that disclosure may result in embarrassment to, or a lack of confidence in, the Territory Government or a public sector organisation (s.50);

- 4.4.8.4.3** the possibility that the applicant may misunderstand the information disclosed (s.50).

A person may or may not choose to explain the particular reason or reasons why they are seeking information. If they do explain, those reasons may suggest public interest factors that favour disclosure. But any stated reason does not affect the public interest factors that are relevant.

- 4.4.9** MRC has 30 days after they receive the application to:

- 4.4.9.1** locate the information applicants have requested

- 4.4.9.2** assess what information can be released

- 4.4.9.3** provide applicants with a decision in writing about whether you have been granted access

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**4.4.9.4** and provide applicants with the reasons for withholding some or all of the information you requested

**4.4.10** MRC may tell applicants that it requires more time if:

**4.4.10.1** the application relates to a large amount of information

**4.4.10.2** extensive searches are required to locate the information

**4.4.10.3** complying with the 30-day period would unreasonably interfere with the conduct of the operations of the organisation

**4.4.10.4** the application includes information about a third party and further time is required to seek the third party's views in regards to the release of the information.

MRC must provide applicants with the details of and reasons for any such delays. If applicants consider the delays are unreasonable, applicants have 90 days from receiving the review decision to make a complaint to the Information Commissioner.

**4.4.11** MRC may:

**4.4.11.1** provide applicants with access in full

**4.4.11.2** provide applicants with access in part

**4.4.11.3** refuse access

**4.4.11.4** neither confirm nor deny that information exists but state that if it did the information would be exempt.

**4.4.12** Public Disclosure

There is no complete list of public interest factors for or against disclosure. The public interest has been described as *"a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and the wellbeing of its members."*

Public interest factors are often factors that are common to all members of the community. For example, all members of the community have an interest in holding government accountable for its activities. However, the interests of a significant part of the community may give rise to a public interest factor.

There are also cases in which there is a public interest;

**4.4.12.1** in protecting the interests of individuals or private organisations (for example in protecting personal privacy or sensitive business information); or

**4.4.12.2** in a particular person or class of people getting access to information (for example, in complainants getting information that fairly explains the way their complaint was handled).

Simple curiosity does not give rise to a public interest factor favouring disclosure, even if a large segment of the community might be interested to know the information.

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### 4.4.13 Dealing with an application.

The application will be dealt with by Council's Records Officer as follows:

- 4.4.13.1 check that the application satisfies the requirements of the Act.
- 4.4.13.2 provide the applicant with an estimate of processing costs (if necessary)
- 4.4.13.3 locate the information they have requested
- 4.4.13.4 consult with any third parties who may be affected by the release of the information (if necessary)
- 4.4.13.5 make a decision regarding the application for access to the information based on the exemptions are set out in sections 44-58 of the Act.
- 4.4.13.6 arrange for applicant to access the information.

The Records Officer may need contact the applicant to talk about the application or get further details to help them locate the information faster and more efficiently.

### 4.4.14 Requirements of an application.

An application must:

- 4.4.14.1 be in writing on Form 135 (F135 - Application to access information);
- 4.4.14.2 include applicants name and an address for correspondence;
- 4.4.14.3 gives enough detail to identify the information requested;
- 4.4.14.4 includes sufficient proof of applicants identity; and
- 4.4.14.5 includes the application fee (if necessary).

### 4.4.15 Declined applications

For decisions made on or after 1 July 2004, applicants can apply for internal review of the decision.

## 4.5 Accuracy of Information and Privacy Complaints

MRC will strive to ensure that the personal information we collect, use or disclose remains accurate, complete and up to date.

If wish to access or change your personal information, or to lodge a complaint about an interference with your privacy or you have a query on how your personal information is collected or handled, please contact MRC's Records Officer using the details provided below.

## 4.6 Council Privacy Statement

The following relates to the management and provision of personal information by MRC:

### 4.6.1 All documentation that collects personal information such as application forms and participation forms must contain Councils approved privacy statement, namely:

"The information requested in this form is being collected by Council for the purpose of updating our administrative systems to be able to carry out Council functions. If you do not provide this information, Council may not be able to process your personal details".

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- 4.6.2** Council may disclose the information provided to individuals on this form to a third party as required in accordance with NT Information Act or/and MRC Privacy Policy, which is available online at [www.macdonnell.nt.gov.au](http://www.macdonnell.nt.gov.au) or on request from Council offices.
- 4.6.3** If individuals wish to access or change their personal information, or to lodge a complaint about an interference with their privacy or have a query on how their personal information is collected or handled, they need to please contact MRC's Records Management Officer on:

Records Officer - MacDonnell Regional Council

PO Box 5267, Alice Springs, NT 0871.

Telephone: 08 8958 9600

Email: [info@macdonnell.nt.gov.au](mailto:info@macdonnell.nt.gov.au)

### 4.7 Monitoring

The Finance and Risk Committee of Council will monitor and advise on privacy and information management as part of their risk management function.

## 5. Policy Details

<b>Replaces Policy No: (if applicable)</b>	DCS012
<b>Responsible Directorate/Department:</b>	Corporate Services – Governance
<b>Council Approval Date:</b>	13 December 2013
<b>Council Minutes Reference:</b>	OCM Item 13.4
<b>Review Cycle:</b>	Four (4) years or sooner if required

## 6. Legislation and References

<b>Related Legislation:</b>	Information Act (NT), Information Privacy Principles, Local Government Act (NT) 2008, Information Regulations (1 September 2017)
<b>Related Policies:</b>	CP116 Records Management Policy CP118 Risk Management Policy
<b>Associated Documents:</b>	F135 – Application to access information ( Doc Id: 200963)

## 7. Version Control

Version No	Council Approval Date	Policy No.	Council Minutes reference (previous version)
1.0	December 2013	DCS012	13.4 Ordinary Council Meeting
2.0	October 2018	CP135	13.2 Ordinary Council Meeting