**Bundaberg Regional Council** Organisational Services Issue Date: 16-04-2021 Review Date: 16-04-2022

# **Information Privacy and Right to Information Policy**

**OP-3-133** 

Rev. No. 3

#### 1.0 INTRODUCTION

The Right to Information Act 2009 (RTI Act) gives a right of access to information in Council's possession or control unless, on balance, it is contrary to the public interest to give access.

The *Information Privacy Act 2009* (IP Act) deals with requests for personal information and amendments to personal information held by Council.

#### 2.0 **POLICY STATEMENT**

Council aims to make public interest information available and easily accessible to members of the community, demonstrating a commitment to openness and transparency. To establish and maintain the public right of access to Council held information the RTI Act sets out governing processes that must be adhered to when processing requests for such information.

Council collects and manages personal information when performing activities, functions and duties. We respect the privacy of individuals and will only collect and manage personal information as stipulated in Council's Privacy Statement and in accordance with the IP Act.

#### 3.0 **POLICY OBJECTIVES**

The purpose of this policy is to ensure Council complies with legislative obligations and functions under the RTI Act and IP Act and to enable a process by which the public can gain access to Council documents. It describes general processes and conditions for accessing information and documents held by Council under the IP and RTI Acts.

#### 4.0 **POLICY PRINCIPLES**

### 4.1 Responsibilities

Council's Chief Executive Officer is delegated by Council as the **Principal Officer** for the purposes of the RTI Act and is responsible for Council's obligations under the RTI Act. **Decision makers** have been delegated by the Chief Executive Officer to make decisions regarding the release of documents. The decision maker is authorised to view any relevant document (including documents containing confidential information) in order to assess the content to determine if the documents are able to be released. This role is delegated to:

- General Manager Organisational Services;
- Chief Legal Officer;
- Senior Governance Officer;
- Governance Officer; and
- Insurance and Governance Officer.

An **Internal Review Officer** is a delegated decision maker of greater seniority to the initial decision maker. In the event an internal review request is received at Council by the applicant, this officer will review the decision handed down by the initial decision maker in accordance with the RTI and IP Acts.

All Council officers have a responsibility to keep and maintain records in accordance with Council's Recordkeeping Policy and associated procedures. Council officers will participate in regular training to identify their obligations in regard to recordkeeping and information provision on commencement of employment and every three years of employment. Upon request, employees must:

- ensure the prompt return of information and/or documentation within required timeframes (unless otherwise arranged);
- provide full and complete records as requested;
- provide separate background information about a document to assist the decision maker in determination whether any exemptions apply for release; and
- participate in training addressing the obligations of Council officers under both the RTI and IP acts.

#### 4.2 Publication scheme

The publication scheme has been developed in accordance with the Queensland Government Ministerial Guidelines for Publication Schemes and will set out classes of information held by Council and the terms on which Council will make the information public.

Council will maintain a publication scheme as required in Section 21 of the RTI Act. The information published will be amended as required and reviewed on an annual basis to ensure currency and accuracy.

### 4.3 Administrative access

The Administrative Access Scheme identifies the type of information suitable to be released without requiring the requester to make an application for the information formally under the RTI or IP Acts.

Council will maintain a framework outlining the information types and procedural steps to be considered when responding to requests for information to be released administratively. These requests will initially be processed under this scheme and if access cannot be granted, it would then be appropriate to direct the requester to lodge a formal RTI or IP access application.

Decisions under the Administrative Access Scheme are not reviewable under the IP Act, but applicants can lodge an Administrative Action Complaint of they are dissatisfied with the process followed.

### 4.4 Disclosure log

Council will maintain a disclosure log, containing a log of documents released to applicants under the RTI Act that does not contain information as outlined in section 78b of the RTI Act.

#### 4.5 Privacy statement

Council will publish and maintain a privacy statement that will set out the ways Council will collect, manage, use and disclose personal information within its control.

#### 4.6 Transfer of personal information outside of Australia

Council will ensure where possible all contracted ICT service providers, corporate systems, applications and software will host data in Australia or will ensure an individual's personal information will only be transferred outside Australia if the conditions listed in section 33 of the IP Act are satisfied.

# 4.7 Contracted service providers

Council will take all reasonable steps to bind contracted service providers with the IP Act, when the contractor is provided with or collects, personal information. Bound contracted service providers are required to comply with the IPP and section 33 of the IP Act and these requirements can be enforced as if it were Council. The contractor remains bound even after the obligations of the service arrangement have ceased. This applies to all contracts or agreements entered into on or after the adoption of this policy.

### 4.8 Information Privacy Principles

### 4.8.1 Collection

Council will only collect the personal information required to fulfil a purpose directly related to our functions or activities. At the time of collection, or as soon as practical thereafter, reasonable steps will be taken to ensure the individual is provided with a collection notice outlining the purpose of the collection, if it is authorised or required under a law, or its usual practice to disclose this type of information. Consent will be sought where the personal information collected is to be disclosed to a third-party and/or stored outside of Australia.

### 4.8.2 Access and amendment

An individual may request access their own personal information. Council will verify the identity of the applicant and consider the request under the Administrative Access Scheme in the first instance. If access cannot be provided administratively the applicant will be redirected to apply for their personal information under the IP Act.

An individual may apply for amendment of their personal information if the information is inaccurate, incomplete, out of date or misleading. Applications to amend personal information must be made on the prescribed Information Privacy Personal Information Amendment Application from.

#### 4.8.3 Use and disclosure

Personal information held by Council will not be disclosed unless:

- the individual is reasonably likely to have been aware, or to have been made aware or its Council's usual practice to disclose that type of personal information to the third party; or
- the individual expressly or impliedly agrees to the disclosure; or
- Council is satisfied on reasonable grounds that the use of the information is necessary
  to lessen or prevent a serious threat to the life, health, safety or welfare of an individual,
  or to public health, safety or welfare; or
- the disclosure is authorised or required under a law; or
- Council is satisfied on reasonable grounds that the disclosure of the information is necessary for 1 or more of the following by or for a law enforcement agency: the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of laws imposing penalties or sanctions;
- the enforcement of laws relating to the confiscation of the proceeds of crime;
- the protection of the public revenue;

- the prevention, detection, investigation or remedying of seriously improper conduct;
- the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal.

# 4.8.4 Storage and security

Council will ensure that any personal information contained in a document under its control is protected against misuse, loss, unauthorised access or use, modification, disclosure or any other abuse.

Personal information will be transmitted via secure means and stored on Council's systems, databases and applications which are protected from intrusion or misuse. Council officers will be provided with a level of access to information that is set at a level appropriate to their role.

### 4.9 Access applications

If a document is not available via the administrative access scheme, a RTI or IP access application must be made to access the document under the provisions of the RTI or IP Acts. Applications apply only to documents that are in existence to the date the application is received.

### 4.9.1 Compliant applications

An access application will become compliant once all requirements set out in section 24 of the RTI Act or section 43 of the IP Act have been satisfied. If the applicant does not make the application compliant within the allotted timeframe, Council will not process the application.

#### 4.9.2 Timeframes

Council has 25 business days to make a decision on an application beginning on the first business day after a valid application is received, or a noncompliant application is made compliant. This period may be extended by a further 10 business days in the event a third-party consultation is initiated. Council can request extra time to make a decision at any time before the end of the processing period.

#### 4.9.3 Fees and charges

All access application fees and charges are calculated and applied in accordance with the Right to Information Regulation 2009 (updated annually) and the RTI Act.

Processing charges may be applied if the total time taken to process an application exceeds five hours. A charge estimate notice will be issued to the applicant estimating any processing and access charges payable by the applicant. The applicant can either accept the charges, narrow the scope of their application to reduce the charges, or withdraw their application.

All accepted charges must be paid in full before the documents (if any) will be released.

# 4.9.4 Third party consultation

If a decision maker intends to give access to a document which contains information that could reasonably be expected to be of concern to that party, they will consult with that third party to seek their views about whether the document is not subject to the RTI Act: and/or the information is exempt or contrary to the public interest to release.

#### 4.9.5 Notification of decision and reasons

RTI and IP access application decisions will be communicated in the form of a decision notice, accompanied by a schedule of documents (where applicable) providing a statement of reasons when making a determination.

#### 4.9.6 Review

The applicant can request an internal review of the decision which will be undertaken by the internal review officer.

The applicant can request an external review of the decision which will be undertaken by the Office of the Information Commissioner either upon receipt of the decision or the receipt of the internal review decision.

# 4.10 Privacy complaints

An individual can make a complaint about an act or practice of Council in relation to personal information that breaches Council's obligations under the IP Act. Privacy complaints must be made in writing to Council in the first instance, providing an address of the applicant and give particulars of the suspected noncompliant act or practice. Council will process all privacy complaints in accordance with the Administrative Action Complaint process.

If an individual is not satisfied with Council's response, they may make a privacy complaint to the Office of the Information Commissioner, provided that at least 45 business days have elapsed since the complaint was first made.

# 4.11 Privacy impact assessment

Employees that are involved in new projects and processes which collect, use or disclose personal information, or where projects or processes deal with personal information in a new way, should complete a Privacy Impact Assessment (PIA) Threshold Assessment Checklist.

New projects or processes identifying potential privacy risks will require the development of a formal PIA to identify how Council will meet its obligations in the IP Act. Formal PIA's will be used to identify and mitigate the impact the project or process might have on the privacy of an individual's personal information.

#### 5.0 REFERENCES/ASSOCIATED DOCUMENTS

Right to Information Act 2009

Information Privacy Act 2009

XD-7-041 Right to Information and Information Privacy Access Application

MD-7-398 Privacy Statement

PD-7-350 Administrative Action Complaint Procedure

CK-7-101 Privacy Impact Assessment (PIA) Threshold Assessment Checklist

DT-7-284 Privacy Impact Assessment (PIA) Report

PD-7-536 Administrative Access Scheme Procedure