

Doug Darlington

Subject: FW: Response - Request Council adopt policy - Applicants sign waiver of material submitted for DA approval
Attachments: oic_guideline3_summary.pdf

From: Domingo, Melanie [<mailto:MDomingo@wyong.nsw.gov.au>]
Sent: Tuesday, 27 September 2011 9:29 AM
To: Doug Darlington
Cc: Vivienne Scott; Anne Rowland
Subject: RE: Response - Request Council adopt policy - Applicants sign waiver of material submitted for DA approval

Dear Mr. Darlington,

As discussed, please find **attached** a summary document from the Office of the Information Commissioner regarding *Guideline 3 for Local Councils - personal information contained in development applications: what should not be put on Council websites*.

The complete Guideline can be accessed via the Information Commissioner's website at:
http://www.oic.nsw.gov.au/oic/oic_agencies/agenciestools/guidelines.html

I note that it is Council's intention to implement the Guidelines in the near future. I will advise you as soon as procedures have been changed.

Yours faithfully,

Melanie Domingo

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Development applications and personal information on local council websites

knowledge update

May 2011

The Information Commissioner has issued Guidelines to assist local councils to apply the public interest test to determine what personal information associated with development applications should not be published on local council websites. This update is a summary of those Guidelines.

Local councils receive and hold a significant amount of personal information collected during the ordinary course of their functions. A key example is the information required to be provided by applicants who lodge development applications (DAs), and by those who wish to comment on those applications.

The *Government Information (Public Access) Act 2009* (NSW) (the GIPA Act) and the Regulation made under that Act, place requirements on local councils to publish the information they hold about DAs on their websites, and to make the information publicly available in other ways. This requirement covers personal information held by councils submitted as part of the DA process.

Local councils concerned about whether, and how, to disclose personal information associated with DAs on their websites have approached the OIC for guidance.

Consultation process

Before issuing any guidance material about the type of personal information that councils should publish on their websites, the Information Commissioner wanted to identify the current practice followed by local councils, and to canvass a range of options on which to base any subsequent advice. The Information Commissioner was also interested to gauge public expectations about this issue.

Accordingly, the OIC released a consultation paper in November 2010. The paper sought responses from local councils about their current practices for publishing DA information, including personal information, and posed four options for how councils might approach this issue in the future. The paper also invited comment from members of the public about the adequacy and appropriateness of DA information on council websites, the type of information, if any, that should not be published on council websites, and desirable procedures for consulting with people before councils publish their personal information.

The period for submissions closed on 14 January 2011. The OIC received 70 responses overall. Of these, 59 were from local councils. With just over 120 local councils in total across NSW, the number of responses received from councils was very positive. The remaining 11 responses were from members of the public and interest groups.

In summary, the responses revealed that:

- 73% (43 out of 59) of local councils that made submissions are currently publishing some DA information on their websites
- more than half of the councils we heard from currently publish minimal information on their websites (58%, or 34 out of 59)
- the option most preferred by councils is to publish some categories of DA information on their websites, but not others, if supplemented by clear Guidelines from the Information Commissioner.

The OIC has published a separate [report](#) on our website outlining the results of the consultation process.

Information Commissioner's Guidelines

The Information Commissioner has used the feedback from the consultation exercise to develop Guidelines under section 12(3) and 14(3) of the GIPA Act. Those Guidelines are designed to assist local councils to apply the public interest test to determine the type of personal information that should be published on council websites. The Guidelines also list the information that should not be published on a website to ensure the protection of individual privacy.

The Guidelines have been developed in consultation with the Acting Privacy Commissioner as required by section 14(4) of the GIPA Act, and with the Division of Local Government.

The Guidelines deal only with personal information, and only with the publication of that information on council

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websites. The Guidelines do not deal with or affect disclosure of personal information by other means, nor do they deal with or affect other non-personal information associated with DAs that is required to be disclosed under the GIPA Regulation and the *Environmental Planning and Assessment Act 1979* (NSW), or the *Environmental Planning and Assessment Regulation 2000* (NSW).

This summary should be read in conjunction with the full [Guidelines](#) at: www.oic.nsw.gov.au/oic_agencies/agenciestools/guidelines.html

What type of personal information might councils hold as part of a DA?

Local councils receive a significant amount of personal information submitted by applicants, property owners and people lodging submissions about DAs. For example, information submitted, or generated in conjunction with, a DA might typically include:

- names and addresses of the applicants, owners and people who lodge submissions
- personal and business contact details
- signatures of DA applicants and people making submissions
- photos of property and people
- financial details of the applicant
- other personal information included to support an application, or to give weight to an objection.

Some of this personal information is required to be submitted and disclosed by law as part of the DA process. Other information, such as financial details and photos of people in their houses, is not mandatory, but may be submitted by applicants and those lodging objections to assist their cause.

In some cases, personal information should be disclosed as it is integral for transparency and to understanding the DA decision-making process. However, in other cases, the information may be of such a personal or sensitive nature that, while still forming part of the DA file, it would be contrary to the public interest for such information to be disclosed on a website where theoretically it could be viewed by anyone with access to the internet and downloaded into other formats.

What information associated with DAs should not be published on a website?

Having had regard to the public interest considerations for and against disclosure, the type of information that is, or is likely to be, submitted in conjunction with DA

applications, and following consultation with the Acting Privacy Commissioner, the Information Commissioner is of the view that it is not in the public interest to disclose the following information on council websites:

- personal contact details, eg phone numbers or email addresses
- signatures
- personal financial information, eg credit card details
- health information
- photos of people.

What should local councils consider before publishing other personal information on their websites?

In the interests of transparency, councils should aim to publish as much DA information, including personal information, as possible, subject to the public interest test. Wherever possible, disclosure should be via the methods set out in the GIPA Act and Regulation, including council websites.

In applying the public interest test to determine whether or not to publish personal DA information on their websites, councils should consider all of the factors in favour of disclosure of information. For example, would disclosure of the information help to:

- promote public awareness about proposed developments
- enable interested or potentially affected parties to make submissions or to object to the proposed development
- ensure accountability and transparency of government decision-making
- facilitate community participation in decision-making.

Publishing some personal information on websites would clearly support the public interest and give context to the decisions being made. For example, publishing the name and address of the DA applicant, the address of the subject property and a description of the work to be done informs members of the public about the proposed development and enables them to voice an opinion. Also, publishing the outcome of the DA provides members of the public with information about the council's decision-making process and the factors that influenced the decision.

Councils also need to consider the factors against disclosure listed in the table in section 14. In particular, councils should ask the following questions:

- Would publishing the information on a website breach the *Privacy and Personal Information Protection Act 1998* (NSW) (the PPIP Act)? To determine this, ask:
 - is the information being disclosed for the same purpose for which it was collected, or a directly related purpose?
 - has the person who is the subject of the information consented to the disclosure?
 - is the public aware that certain types of personal information provided during the DA process may be disclosed, and the method of disclosure?
- Does the information contain material that is malicious or possibly defamatory?

If the information is disclosed for the same purpose for which it was collected (or a similar one), the individual has consented to the disclosure, or the public is aware that specific personal information is publicly disclosed and how it is disclosed, it is unlikely that there would be a breach of the PPIP Act.

Personal information can be released under the GIPA Act even if the PPIP Act is breached. This is made clear by section 5 of the PPIP Act, which provides that nothing in that Act serves to lessen the obligations agencies must exercise under the GIPA Act. Nevertheless, councils should aim to avoid breaches of the PPIP Act when disclosing personal information.

To ensure compliance with the PPIP Act, councils should take steps to notify people of the type of information submitted with DA applications and objection letters that will be made publicly available, and how that information will be disclosed.

Ongoing work of the OIC

In the coming weeks the OIC will continue to work with local councils to address practical areas of difficulty or concern, such as:

- designing a model DA form to make it easier for councils to collect information in a way that separates personal information which should not be published online from that which should be
- developing a standard form notification letter so that councils can be assured that their practices concerning the publication of personal information on their websites comply with GIPA and PPIPA
- providing ongoing advice and assistance.

For more information

- go to www.oic.nsw.gov.au
- email oicinfo@oic.nsw.gov.au
- mail GPO Box 7011, Sydney NSW 2001
- visit Level 11, 1 Castlereagh Street, Sydney NSW 2000
- call 1800 INFOCOM (1800 463 626) between 9am to 5pm, Monday to Friday (excluding public holidays).

Checklist for local councils

1. Does the information contain:

- personal contact details, eg, phone numbers or email addresses
- signatures of DA applicants or people who lodge submissions
- personal financial information, eg credit card details
- health information
- photos of people.

If 'yes' do not publish this information on your websites.

2. For all other personal information associated with DAs, councils should publish as much information as possible, subject to the public interest test.

3. In considering factors in favour of disclosure of personal information contained in DAs, councils should start with the presumption that the information should be published unless there is an overriding public interest against disclosure.

4. In assessing relevant considerations against disclosure, councils should ask the following questions:

- Would publishing the information on a website breach the PPIP Act?
- Does the information contain material that is malicious or possibly defamatory?

If "yes", then the material should not be published on council websites.

5. To determine if publishing personal information would breach the PPIP Act, councils should ask:

- is the information being disclosed for the same purpose for which it was collected, or a directly related purpose?
- has the person who is the subject of the information consented to the disclosure?
- is the public aware that certain types of personal information provided during the DA process may be disclosed, and the method of disclosure?

If the answer to any of these questions is "yes", it is unlikely that there would be a breach of the PPIP Act.

6. To ensure that a breach of the PPIP Act is avoided, councils should consider notifying DA applicants and people who lodge submissions of the type of personal information that is routinely published on their websites.