



# RIGHT TO INFORMATION POLICY AND PROCEDURES

Approved By: Council  
Doc Controller: General Manager  
File: 126

Document Code: DVC-POL-010  
Version: 2  
Approved Date: 18/06/2020  
Next Review Date: 18/06/2024

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### 1. PURPOSE

Pursuant to the *Right to Information Act 2009* (the Act) and the *Right to Information Regulations 2010* (the Regulations), Council extends the right of the community to have access to information held by local authorities with a view to achieving more open, accountable and transparent government. As a local authority, Council is subject to the Act and the Regulations.

Council acknowledges the right of the public to:

- obtain information held by Council;
- obtain information about Council's structure, policies and activities unless disclosure would, on balance, be contrary to the public interest; and
- ensure that personal information held about them by council is accurate and complete.

### 2. DEFINITIONS

<b>Applicant/s</b>	A person or organisation that has submitted the Application for Assessed Disclosure form.
<b>Council</b>	Derwent Valley Council, Council officers and staff members.
<b>(delegated) Right to Information Officer</b>	The Right to Information Officer has delegated authority through the Principal Officer to act on behalf of Council by conducting assessments and making decisions relating to the provision of information in accordance with the <i>Right to Information Act 2009</i> following an Application for Assessed Disclosure.
<b>Ombudsman Tasmania</b>	Ombudsman Tasmania is the State authority that regulates Right to Information and other matters.
<b>Principal Officer</b>	The Principal Officer is the General Manager of Council and has authority to act on behalf of Council by conducting reviews and making decisions relating to Right to Information.
<b>Public Authority</b>	Derwent Valley Council (Council).
<b>Public Interest</b>	The "public interest" refers to the wider public good, not to what the public might find interesting.

#### 2.1 Information

For the purposes of Right to Information, Ombudsman Tasmania defines information as follows:

*"Information includes many things and is not only documents. A document will contain information, but information can also exist in other forms. The Act defines information in Section 5 as:*

- anything by which words, figures, letters or symbols are recorded and includes a map, plan, graph, drawing, and photograph; and
- anything in which information is embodied so as to be capable of being reproduced.



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*This definition covers practically anything a public authority could create and can include phone messages, databases, and things such as CCTV.”*

### 2.2 Types of disclosure

The Act refers to 4 types of disclosure:

*Required disclosure* is the disclosure of information by a public authority where:

1. the information is required to be published by the Act or another Act; or
2. disclosure is otherwise required by law or is enforceable under an agreement.

*Routine disclosure* is the disclosure of information which the public authority decides may be of interest to the public, where the disclosure is not one of the other three types of disclosure;

*Active disclosure* is the disclosure of information by a public authority in response to a request from a person (i.e. the voluntary release of information upon receipt of a request; and

*Assessed disclosure* is the disclosure of information by a public authority in response to an application under Section 13 of the Act (i.e. in response to a formal Application for Assessed Disclosure).

Council recognises that ‘assessed disclosure’ is a last resort and will proactively examine and implement ways of making information available on a voluntary basis, either by way of general publication, or in response to a request.

### 3. SCOPE

The Right to Information Policy and Procedures applies to any individual or organisation who have a legally enforceable right to be provided with information in the possession of Council, unless the information is an exemption, pursuant to the Act.

The Right to Information Policy and Procedures are to be applied in conjunction with the Ombudsman Tasmania’s Right to Information Manual, the *Right to Information Act 2009* (the Act) and the *Right to Information Regulations 2010* (the Regulations).

### 4. LEGISLATION AND STATUTORY REQUIREMENTS

*Local Government Act 1993*

*Right to Information Act 2009*

*Right to Information Regulations 2010*

*Personal Information Protection Act 2004*

*Privacy Act 1988*

*Privacy Regulation 2013*



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### 5. POLICY

Council is committed to providing an open, accountable and transparent environment, which enables members of the public to access to Council documents that do not require recourse to formal procedures in the Act, as far as is possible.

This will benefit in facilitating disclosure with minimum administrative delay and cost, however, there will be occasions when it is necessary or appropriate to make an application (for assessed disclosure) under the Act. For example, where third party or sensitive non-personal information is requested, or where there are grounds for considering that the information may be exempt from access under the Act.

#### 5.1 Delegation

At the time of approval of the Right to Information Policy and Procedures, the General Manager as the Principal Officer is the authority responsible for determining the outcome of Applications for Assessed Disclosure, pursuant to Section 22(4)(a) of the *Local Government Act 1993*. If specified in an instrument of delegation, the Principal Officer may delegate to another Council officer as to the performance or exercise of such of his or her functions or powers, under the Act (other than this power of delegation).

#### 5.2 Providing information

Information requested may be provided:

- by giving the applicant a reasonable opportunity to inspect the record containing the information;
- in the case of information recorded or embodied in a record in a manner in which it can be reproduced, by providing the applicant with a transcript of the information;
- by providing the applicant with a copy, including an electronic copy, of the record containing the information; or
- in cases where information is contained in a record from which sounds or visual images can be reproduced, by giving the applicant a reasonable opportunity to hear the sounds or view the images.

#### 5.3 Amending personal information

Individuals have the right to seek amendment of personal information held about them, where it is considered to be inaccurate, incomplete, out-of-date or misleading. Amendment of information does not extend to deletion or destruction of records.

#### 5.4 Charges

Where formal applications under the Act are made, the fees and charges specified in the Act will be applied by Council. Further information is available in the Fees section.

#### 5.5 Assessment

Once an Application for Assessed Disclosure has been submitted, the (delegated) Right to Information Officer is responsible for making initial decisions regarding the release of information within the timeframes stipulated in the Act. In this function, the (delegated) Right to Information Officer may directly



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contact applicants regarding access to information, for the purposes of clarifying the application or for other reasons related to the application.

Under the Act, the Principal Officer and delegated Right to Information Officer are authorised to enter into a confidential relationship with applicants or prospective applicants and are not required to reveal the identity of an applicant to another staff member or others without the express agreement of the applicant.

The General Manager, as Principal Officer, is responsible for formal internal review of decisions made by the delegated Right to Information Officer, if requested by the applicant after the initial Application for Assessed Disclosure.

### 5.6 Exemptions

The Act contains seventeen grounds for exemptions where it may not be in the public interest to disclose information, as it may be prejudicial to essential public interests or the personal or business affairs of individuals or organisations.

If an exemption validly applies to information an applicant has requested, the applicant is not entitled to access that information. Each exemption contains a series of requirements which must be met before information will be deemed exempt.

### 5.7 Timeframe

Council will notify applicants of the decision on an Application for Assessed Disclosure as soon as practicable, but in no more than 20 working days of the application being accepted. If an applicant's request is complex or for a large amount of information Council may ask the applicant for more time be allowed.

If there is a need to consult with a third party about their business affairs or about their personal information, more time is automatically granted. If this occurs the Council will notify the applicant this extends the time frame a response to no more than 40 working days

Section 15 of the Act denotes timeframes in further detail.

### 5.8 Decisions

When making decisions, the delegated Right to Information Office will refer to the Ombudsman Tasmania's Right to Information Manual, the Act and the Regulations.

When responding to an application for assessed disclosure, the delegated Right to Information Officer must provide the applicant with a written decision that explains:

- the information in Council's possession (depending on how the Application for Assessed Disclosure is worded);
- whether or not the information is released;
- the reasons for any exemptions (where applicable); and



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- the applicant's rights to seek a review of an assessed disclosure decision, including instructions on how to request a review.

Council will provide to the applicant with reasons for decisions not to release information, to give only partial access to information or to refuse to amend personal information. The right to seek a review of the decision and instructions on how a review may be requested will be included with the decision.

### 5.9 Review

To request a review of a decision by a delegated Right to Information Officer, the applicant can request an internal review, which will be undertaken by the Principal Officer. Further external review by the Ombudsman is also available, should the applicant still disagree with the internal review.

#### *Internal Review Process*

If a review is requested, the initial decision (made by the (delegated) Right to Information Officer) will be reassessed by the Principal Officer. An application for an internal review can be made by:

- the initial applicant – within 20 days of the initial decision;
- a third party seeking a review relating to their personal affairs – within 10 days of the original decision; or
- a third party seeking a review on the basis that the original decision is likely to expose them to competitive disadvantage - within 10 days of the original decision.

The Principal Officer must review the assessment and make a new decision as soon as practicable, or within 20 working days. Reviews can be requested in writing, via the following methods:

Email:	<a href="mailto:dvcouncil@dvc.tas.gov.au">dvcouncil@dvc.tas.gov.au</a> Please add "Attn: Principal Officer, Right to Information" in the subject line.
Mail:	Derwent Valley Council Attention: Principal Officer, Right to Information PO Box 595 New Norfolk TAS 7140

If only partial information is provided to the applicant but the decision is later changed following an internal or an external review, the additional information will be sent to the applicant or relevant third party. Outcomes of a review are to be communicated to the initial applicant or relevant third party in writing.

#### *External Review Process*

An applicant or a third party affected by a decision may seek an external review by the Ombudsman Tasmania. This may occur where:

- the original decision was made by the Principal Officer;
- the timeframe for the original decision has lapsed;



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- a decision from an internal review has not been made within 15 working days; or
- a range of other reasons listed under Section 45(1) of the Act.

Contact details for Ombudsman Tasmania are available in the Appendix.

### 6. PROCEDURES

Council has developed Right to Information procedures, as required under the Act. The Right to Information Policy and Procedures and the Application for Assessed Disclosure are available for public viewing on the Council website or upon request at Council Administration Building, Circle Street, New Norfolk TAS 7140, during working hours.

#### 6.1 What is the Right to Information?

The *Right to Information Act 2009* (the Act) provides access to information held by public authorities by:

- authorising and encouraging routine disclosure of information held by public authorities without the need for requests or applications;
- authorising and encouraging active disclosure of information held by public authorities in response to informal requests without the need for applications;
- giving members of the public an enforceable right to information held by public authorities; and
- ensuring that access to information held by government bodies and public authorities is restricted only in limited circumstances which are defined in the Act.

Council is a public authority.

#### 6.2 Why Tasmania has a Right to Information Act

Section 3 of the Act includes this statement of the objects of the Act:

1. *The object of this Act is to improve democratic government in Tasmania –*
  - a) *by increasing the accountability of the executive to the people of Tasmania; and*
  - b) *by increasing the ability of the people of Tasmania to participate in their governance; and*
  - c) *by acknowledging that information collected by public authorities is collected for and on behalf of the people of Tasmania and is the property of the State.*
2. *This object is to be pursued by giving members of the public the right to obtain information held by public authorities and Ministers.*
3. *This object is also to be pursued by giving members of the public the right to obtain information about the operations of Government.*
4. *It is the intention of Parliament –*
  - a) *that this Act be interpreted so as to further the object set out in subsection (1); and*
  - b) *that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information.*

The Act extends the right of the community to have access to information held by public authorities with a view to achieving more open, accountable and transparent government. As a public authority, Council is subject to the Act and accordingly acknowledges the right of the public to:



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- obtain information held by Council;
- obtain information about Council's structure, policies and activities unless disclosure would, on balance, be contrary to the public interest; and/or
- ensure that personal information held about them by council is accurate and complete.

### 6.3 How to access to information

Council is required to make some information available to the public through proactive disclosure. This means that Council routinely make information available which will assist the public in understanding what it is has been done and how it is done. This is may be done:

- through the Council website
- through publications (e.g. fact sheets, newsletters or discussion papers)
- through reports (e.g. annual reports) or upon request.

Some information is not released in this way, either because it is not of general public interest or because it is information the Council would need to assess against the exemptions in the Act prior to making it publicly available.

If you cannot find the information you are looking for please contact Council for assistance. If the information is not able to be provided freely, Council will contact the (delegated) Right to Information Officer to assist you to make an Application for Assessed Disclosure.

#### *Application for Assessed Disclosure*

Applications relating to the Right to Information Act need to be made to the department, authority or council holding the relevant information or most closely related to the information. Please ensure you have searched thoroughly for the information you require and have spoken to the (delegated) Right to Information Officer before you make a formal application.

To make an application, please complete the Application for Assessed Disclosure form, which is available on the Council website or at Council Chambers. Once complete, return it to Council in one of the following ways:

Email:	<a href="mailto:dvcouncil@dvc.tas.gov.au">dvcouncil@dvc.tas.gov.au</a> Please add "Attn: Right to Information Officer" to the subject line.
Mail:	Derwent Valley Council Attention: Right to Information Officer PO Box 595 New Norfolk TAS 7140
In Person:	Council Administration Building Circle Street New Norfolk TAS 7140



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If you do not use the Application for Assessed Disclosure form, your application must be made in writing and include the information that is requested in the Application for Assessed Disclosure form. This is a regulatory requirement under Tasmanian law.

### *What happens to an Application for Assessed Disclosure?*

Council will check your application to make sure that Council hold the information requested, that any relevant documentation is attached (e.g. proof of identity) and that you have paid the application fee (or that the fee is to be waived, where applicable).

Council may transfer your application to another public authority if not best placed to provide you with the information you have requested. If this is the case you will be notified in writing of where your enquiry has been referred.

Council may need to contact you to ask you about your application, in order to properly and fully understand your request.

The (delegated) Right to Information Officer will assess your application and let you know the outcome in writing. You will be notified of the decision as soon as possible, but in no more than 20 working days of the application being accepted.

If your request is complex or for a large amount of information, Council may ask for an extension to this timeframe. If Council need to consult with a third party about their business affairs or personal information, additional time is automatically allowed. In this case you will be informed in writing. In this case, Council will let you know the outcome of the assessment as soon as possible, but no later than 40 working days.

If the application or part of the application is refused, the reasons for the refusal will be provided in writing, together with details on the right to seek a review of the decision.

### *Requesting a review*

If you do not agree with a decision you may make an application for review to the Principal Officer. All review requests must be submitted in writing via one of the following methods:

Email:	<a href="mailto:dvcouncil@dvc.tas.gov.au">dvcouncil@dvc.tas.gov.au</a> Please add "Attn: Principal Officer, Right to Information" to the subject line and include the original email thread, if possible.
Mail:	Derwent Valley Council Attention: Principal Officer, Right to Information PO Box 595 New Norfolk TAS 7140

The Principal Officer will advise the result of your review in writing.



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If you do not agree with the review, you may make an application for review to the Ombudsman Tasmania. Contact details for Ombudsman Tasmania are available in the Appendix.

### 6.4 Fees

Applications for Assessed Disclosure are to be accompanied by the application fee. This fee is 25 fee units, indexed annually by the Tasmanian Treasury. Fee indexing is available for public viewing on the Tasmanian Treasury website and will be calculated by Council at the time of your application. If you do not have internet access please contact Council to find out the current cost of an application.

#### *Waived fees*

Pursuant to the Act, you may apply to have the fee waived if:

- you are a member of parliament and the application is in connection with your official duty;
- you are a journalist and the application is in connection with your official duty;
- you demonstrate that the information sought is intended to be used for general public interest or benefit; or
- you are in financial hardship (e.g. you are on income support payments, in which case please provide evidence of Centrelink or Veterans Affairs payments, or similar).

### 6.5 Changing your information

You can access your personal information at any time and amend the details through Council. Proof of identity is required.

You must submit any changes in writing, via the following methods:

Email:	<a href="mailto:dvcouncil@dvc.tas.gov.au">dvcouncil@dvc.tas.gov.au</a> Please add "Attn: Right to Information Officer" to the subject line.
Mail:	Derwent Valley Council Attention: Right to Information Officer PO Box 595 New Norfolk TAS 7140

If you are not permitted to change or delete details, you will be advised in writing. If you have been denied access to your personal information and you disagree with the decision, you may apply to the Principal Officer for a review of that decision.

If you do not agree with the decision of a review by the Principal Officer, external appeal is available through the Ombudsman Tasmania. Contact details for Ombudsman Tasmania are available in the Appendix.

### 6.6 Right to Information Manual and Guidelines



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The Ombudsman Tasmania has a Right to Information Manual and Guidelines available on the Ombudsman Tasmania website. Contact details for Ombudsman Tasmania are available in the Appendix.

### 6.7 Related Documents

CCTV Policy (2017)

Privacy Policy (2017)

### APPENDIX A – OMBUDSMAN TASMANIA CONTACT DETAILS

Address:	NAB House Level 6, 86 Collins Street Hobart TAS 7000
Mail:	Ombudsman Tasmania GPO Box 960 Hobart TAS 7001
Phone:	1800 001 170
Fax:	03 6173 0231
Email:	<a href="mailto:ombudsman@ombudsman.tas.gov.au">ombudsman@ombudsman.tas.gov.au</a>
Website:	<a href="https://www.ombudsman.tas.gov.au">https://www.ombudsman.tas.gov.au</a>