

Circular Details	Circular No 19-21 / 26 September 2019 / A664471
Previous Circular	<i>19-08 Consultation on revised IPC Guideline 1 Returns of Interests</i>
Who should read this	Councillors / General Managers / Governance staff
Contact	Council Governance / olg@olg.nsw.gov.au / (02) 4428 4100
Action required	Information

Release of IPC Guideline 1 Returns of Interests

What's new or changing?

- The Information and Privacy Commission (IPC) has finalised and issued *Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons* (Guideline 1).
- Councils should review the positions they currently identify as designated persons in light of Guideline 1 by applying the principles set out in the attachment to this circular.

What this will mean for your council

- Guideline 1 states that councillors' and designated persons' returns of interests must be made publicly available free of charge on councils' websites, unless there is an overriding public interest against disclosure of the information contained in them or to do so would impose unreasonable additional costs on the council.
- Where a council decides that there is an overriding public interest against the disclosure of some of the information contained in a return, consideration should be given to releasing an edited copy of the return (for example redacting the individual's signature and residential address).
- Where information is deleted from a return, councils should keep a record indicating, in general terms, the nature of the information redacted from the return in accordance with section 6(5) of the *Government Information (Public Access) Act 2009* (GIPA Act).
- Councils should be mindful when identifying a position as the position of a designated person or a committee as a committee whose members are designated persons, that the consequence of this is that the council will be required to publish information contained in those persons' returns of interests on their websites.
- The Office of Local Government (OLG) would encourage councils to review the positions and committee memberships that they currently identify as those of designated persons with this consequence in mind.
- OLG would encourage councils to apply the principles set out in the attachment to this circular when identifying positions and committee memberships as those of designated persons.

Key points

- Section 6 of the GIPA Act provides for the mandatory proactive release by NSW public sector agencies (including councils) of open access information. The GIPA Act provides that open access information must be made publicly available free of charge on a website maintained by the agency.
- Councillors' and designated persons' returns of interests are prescribed as open access information for local government under Schedule 1 to the *Government Information (Public Access) Regulation 2018*.

Where to go for further information

- Guideline 1 and further information on open access information requirements for local government is available on the IPC's website at www.ipc.nsw.gov.au.
- The attachment to this circular provides guidance on the principles councils should apply when identifying positions and committee memberships as those of designated persons.
- See the [Guide to Completing Returns of Interests](#) which is available on OLG's website, for information on how to complete returns of interests and what information to include.
- Contact the IPC at 1800 472 679.
- Contact OLG's Council Governance Team on 02 4428 4100.



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ATTACHMENT

Identifying “designated persons”

The obligation to complete returns of interests

Under the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct), councillors and designated persons are required to complete and submit returns of interests within 3 months of:

- becoming a councillor or designated person
- 30 June of each year, and
- becoming aware of a new interest that must be disclosed in the return.

Who is a “designated person”?

Under clause 4.8 of the Model Code of Conduct, designated persons include:

- the general manager
- senior staff of councils for the purposes of section 332 of the *Local Government Act 1993*
- any other member of staff or delegate of the council who holds a position identified by the council as the position of a designated person because it involves the exercise of a function that could give rise to a conflict of interest, and
- a member of a committee of the council identified by the council as a committee whose members are designated persons because the functions of the committee involve the exercise of functions that could give rise to a conflict of interest.

Identifying “designated persons”

The requirement to publish returns of interests is designed to operate as a transparency mechanism to ensure that key decision makers in councils appropriately disclose and manage pecuniary interests they may have in matters they are dealing with.

Councils should be mindful when identifying a position as the position of a designated person or a committee as a committee whose members are designated persons, that the consequence of this is that the council will be required to publish personal information about those persons on their websites.

Councils should weigh this consequence against 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.

The types of positions or committee memberships that should be identified as designated persons are those that exercise functions or decision-making that involve the potential for significant risk to the council, including of damage to the council’s reputation, where conflicts of interest are not disclosed and appropriately managed.