

PROCEDURE DOCUMENT

Procedure Name: Pecuniary Interest Returns

Manager Approval:



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Responsible Department: Legal and Governance

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Purpose

The purpose of this document is to provide instructions on how to ensure that the disclosure of interest by Councillors and designated persons are complete and made publicly available on the Council Website.

Background

The pecuniary interest returns of councillors, designated persons and delegates (The PI Returns) are required to be made available on Council's website unless there is an overriding public interest against doing so, or if to do so imposes an unreasonable additional cost on Council.

This document sets out the reasons that information may be redacted from these records and the process for uploading the PI Returns to the Council website.

Definitions

Designated Person – *“Penrith City Council considers all Councillors, the General Manager, Directors, and Managers as Designated Persons. Other staff will only be considered as designated persons in exceptional circumstances, where decision making authority exists that is not overseen by one of the forementioned categories of staff”*

Disclose - Information includes make information available and release or provide access to information.

Pecuniary Interest Return – The returns of the interests of Councillors, designated persons and delegates.

Personal information - information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

Relevant Legislation

- Section 6(1) of the *Government Information (Public Access) Act 2009 (the Act)* requires an agency to make government information that is its *open access information* publicly available unless there is an *overriding public interest against disclosure* of the information.¹
- Section 6(2) of the Act requires *open access information* to be available free of charge on a website unless to do so would impose unreasonable additional costs on the agency.
- Section 6(4) of the Act requires agencies to facilitate public access to *open access information* by deleting (i.e. redacting) certain information from a copy of that information if its inclusion would otherwise result in an *overriding public interest against disclosure*.
- The returns of the interests of councillors, designated persons and delegates (also known as pecuniary interest returns) are prescribed as *open access information*.²
- Therefore, the PI Returns are considered *open access information*.
- Section 3 outlines the objects of the Act as:
 - (a) To maintain and advance a system of responsible and representative democratic government that is open and accountable, fair and effective by opening government information to the public by:

- i. Authorising and encouraging proactive release;
 - ii. Creating an enforceable right to access government information; and
 - iii. Restricting government information only where there is an overriding public interest against disclosure.
- Section 5 of the Act provides that there is a presumption in favour of disclosure of information unless there is an overriding public interest against disclosure.
- Section 13 provides the principle for determining whether there is an *overriding public interest against disclosure* of government information.
- Section 15 of the Act requires agencies to promote the objects of the Act and to have regard to guidelines issues by the Information and Privacy Commissioner (IPC).
- Relevantly, the IPC has published Information Access Guideline 1 (For Local Councils on the disclosing the interests of councillors and designated persons September 2019) and Information Access Guideline 4 (Personal information as public interest consideration under the GIPA Act November 2018).

Public Interest Test

Public interest consideration in favour of disclosure

The following *public interest consideration in favour of disclosure* is of the PI Returns is relevant:

- a. Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.³
- b. The fact that the information in issue is *open access information* is an important factor in favour of disclosure.⁴
- c. Agencies must exercise their functions so as to promote the object of the Act.⁵ That is, to encourage the proactive release of government information unless there is an *overriding public interest against disclosure*.

Given there is no access applicant in this decision, the motives for making an access application cannot be taken into account. Further public interest considerations may be identified where an access application is being considered.

Public interest consideration against disclosure

Section 14(2) of the Act provides an exhaustive list of *public interest considerations against disclosure* that can be taken into account (other than those set out in Schedule 1). Relevantly, the Table to section 14 provides:

Individual rights, judicial processes and natural justice. *There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:*

- (a) *reveal an individual's personal information.*

'Personal information' is a defined term within the Act to mean:

"information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion. Personal information includes such things as an individual's fingerprints, retinaprints, body samples or genetic characteristics."

Information about an individual (comprising the individual's name and non-personal contact details, including the individual's position title, public functions and the agency in which the individual works) that reveals nothing more than the fact that the person was engaged in the exercise of public functions is excluded from the above definition of 'Personal Information'.

The IPC's *Information Access Guideline 4 (Personal information as public interest consideration under the GIPA Act November 2018)* provides guidance to agencies on this public interest consideration against disclosure.

Paragraph 1.2 of Guideline 4 provides a list of common examples of personal information, including (but not limited to): personal address and contact details, financial information including bank accounts and investments, membership of voluntary or professional bodies including trade unions.

The IPC's *Information Access Guideline 1 (For Local Councils on the disclosing the interests of Councillors and designated persons September 2019)* provides guidance on disclosing certain information such as that contained in the PI Returns.

Guideline 1 encourages the proactive release of information such that contained within the PI Returns. However, importantly, the Guideline recognises and advises that edited copies of returns may be released with certain personal information redacted. Guideline 1 goes on to advise that those edited versions of returns should be made available on Council's website.

The PI Returns contain the personal information of those individuals that have completed the forms. The personal information contained within those documents includes the signature, personal address, contact details, information about investments, and information about trade union or other professional membership.

The information within the PI Returns which pertains to an individual's name and position with Council does not fall within the definition of 'personal information'.

Balancing of public interest considerations

Taking into account all factors relevant to the public interest test, there is an overriding public interest **in favour of disclosure** of the PI Returns with the redaction of certain personal information.

The proactive release of the PI Returns serves to promote the objects of the Act, promote open discussion of public affairs and contribute to government accountability.

However, the inclusion of the identified personal information⁶ within those PI Returns does not positively contribute to that public interest consideration. The release of that personal

information would serve only to reveal an individual's personal information and, if it were included, would tip the public interest test against the disclosure of the PI Returns.

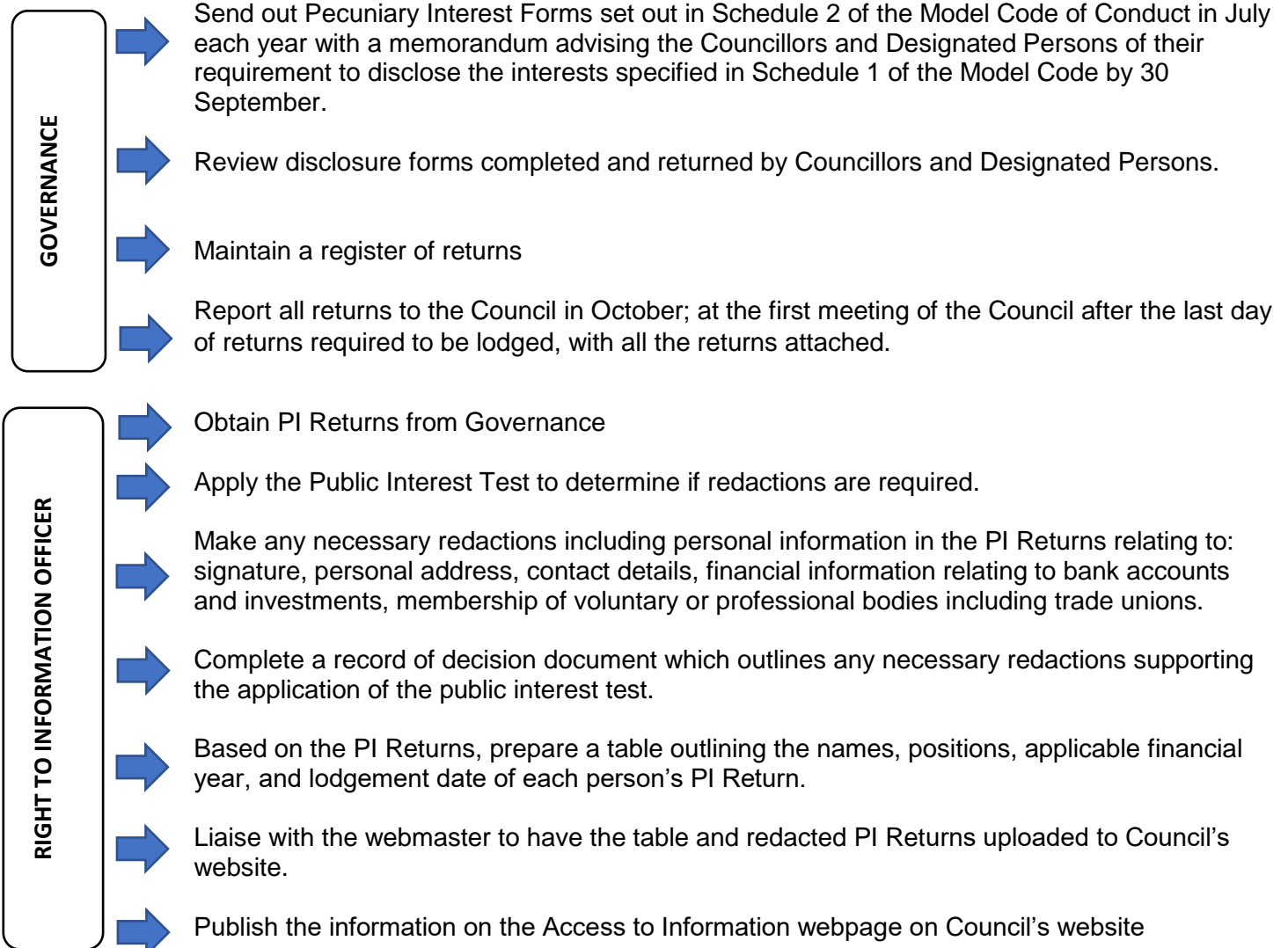
The correct approach is to redact the identified personal information from the PI Returns to enable the disclosure of the information that would not cause an *overriding public interest against disclosure* to occur.

Little weight is given to the release of the personal information within the un-redacted PI Returns as it serves no identified *public interest consideration in favour of disclosure*.

By deciding to release redacted versions of the PI Returns, Council is complying with its obligation in section 6(4) of the Act, having regard to Guidelines 1 and 4 of the IPC, and promoting the objects of the Act.

The PI Returns should be proactively released in a redacted form. The PI Returns should be made publicly available on Council's website.

Pecuniary Interest Returns Process – Councillors and Designated Persons



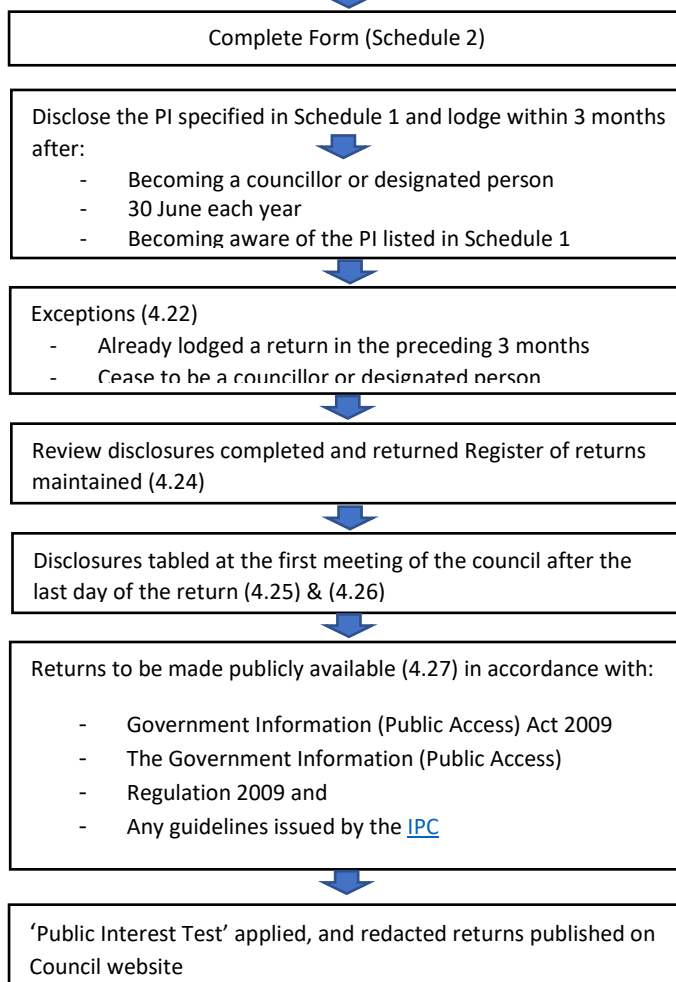
Pecuniary Interest Disclosures – Part 4, Model Code of Conduct

Who should disclose Pecuniary Interests (PI) and how

<p>Council Staff other than Designated Persons</p> <p>*Disclose any PI to the Manager as soon as practicable after becoming aware (4.14)</p>	<p>Council Advisors</p> <p>* Disclose the nature of any PI to the meeting at the time the advice is given (4.16)</p>	<p>Council Committee Members (4.18)</p> <p>* Disclose the nature of the PI to the meeting (4.28) and must not be present at the time of the meeting where the matter is being considered or voting (4.29)</p> <p>* Record the disclosure in the minutes</p>
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<p>Councillors (4.20)</p> <p>*Disclosure of interests in written returns (4.21)</p> <p>* Disclose the nature of the PI to the meeting (4.28) and not be present at the time of the meeting where the matter is being considered or voting (4.29)</p>	<p>Designated persons (4.8)</p> <p>* As soon as becoming aware of any PI (4.10)</p> <p>*Disclosure of interests in written returns (4.21)</p>
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Disclosure of interests in written returns (4.21)



What is a Pecuniary interest (4.1)

an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person (your spouse or de facto partner, your relative, or your partner or, employer or, a company or other body of which any of the above listed is a shareholder or member)

You do not have a pecuniary interest if:

- The interest is so remote or insignificant (4.2)
- You are unaware of the pecuniary interest, member or employed only, or have no shares of the company or body that you are a member of and that has a pecuniary interest in a matter (4.5)

You do not have to disclose interests listed in 4.6

Who is a Designated Person (4.8)

- General Manager
- Other senior staff of the council
- Other staff or delegate of the council who holds a position identified by the council as a designated person.
- A person other than staff who is a member of a committee of the council identified by the council as a designated person.
- Any other person who is not a designated person must disclose any pecuniary interest to their manager in writing as soon as becoming aware on the interest (4.14)

Penrith City Council considers all Councillors, the General Manager, Directors, and Managers as Designated Persons.

Other staff will only be considered as designated persons in exceptional circumstances, where decision making authority exists that is not overseen by one of the forementioned categories of staff.

Schedule 1

- Real Property
- Gifts
- Contributions to travel
- Interest and Positions in Corporations
- Interest as a Property Developer
- Positions in trade unions and professional or business associations
- Dispositions of real property
- Sources of Income
- Debts
- Discretionary disclosures