

# Confidential Information Policy

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## 1. Background

Council operates in an environment which requires compliance with good governance principles including those of public accountability and transparency. Council seeks to inform the public of issues under consideration and the nature of the decisions made by Council. Accordingly, Council Officials are expected to perform their functions and duties in a manner that allows the public to be informed about Council's activities and practices.

However, Council acknowledges there are certain documents and types of information that are confidential and must not be disclosed to third parties.

## 2. Objective

The main objectives of this policy are to –

- Ensure that Councillors, staff, volunteers and contractors are made aware of their obligations, responsibilities and duties concerning access to and disclosure of, Confidential Information associated with any Council business or activities; and
- Provide guidance to Councillors and staff in identifying, assessing, managing and reporting on the use and/or misuse of Confidential Information.

## 3. Policy Statement

Councillors and staff must use Council Information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government.

## 4. Policy Coverage

This policy is applicable to any person covered under Council's Codes of Conduct, including the following:

- Councillors, including the Mayor and Deputy Mayor
- Council Staff (regardless of classification)
- Delegates of Council, including volunteers
- Members of Council's committees, reference groups and working parties
- Contractors To Council.

## 5. Definitions

- **Confidential Information** means any information with restrictions placed on the communication or dissemination of that information. Confidential Information may include information provided 'in-confidence', whether oral, written, electronic or in any other form, which is used to inform policy positions, is only to be internally distributed and is not to be shared.
- **Council Official** means the Mayor, Councillors, staff, delegates of Council, members of Council's committees, reference groups and working parties, and volunteers.
- **Staff** means all employees regardless of classification.
- **LG Act** means the *Local Government Act 1989*.
- **The Regulation** means the Local Government (General) Regulation 2015.
- **PDP Act** means the *Privacy and Data Protection Act 2014*.

- All other definitions set out in the *Local Government Act 1989* (Act) and Council's Codes of Conduct apply equally to this policy.

## 6. Statutory Provisions

Councillors receive confidential information in accordance with section 77 and section 89(2) of the *Local Government Act 1989*.

Section 77 directs that a person who is, or has been, a Councillor or a member of a special committee, must not disclose information that the person knows, or should reasonably know, is confidential information.

Section 89 of the *Local Government Act 1989* allows Council or a Committee of Council to close to the public its meeting to allow discussion of a range of matters as set out in the section. Documents and information considered during the closed parts of a meeting are Confidential Information for the purposes of this Policy.

Disclosure of Confidential Information associated with a closed meeting of Council is a breach of the LG Act as well as Council's Codes of Conduct and associated policies.

## 7. Confidential Information

Information is confidential information if:

- The information was provided to the Council or special committee in relation to a matter considered by the Council or special Committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential.
- The information has been designed as confidential information by a resolution of the Council or special committee which specifies the relevant ground or grounds under applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential.
- The information has been designated in writing as confidential information by the CEO specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential. In this case, the document will be watermarked confidential and the cover page of the confidential document will have the following statement:

*"This document has been designated as confidential by the Chief Executive Officer, in accordance with section 77 of the Local Government Act 1989, as it relates to <<insert reason>> as defined under section 89 of the Local Government Act 1989."*

Under section 89(2) information is deemed confidential information if one of the following grounds is applied to it:

- Personnel matters;
- The personal hardship of any resident or ratepayer;
- Industrial matters;
- Contractual matters;
- Proposed developments;
- Legal advice;
- Matters affecting the security of Council property; or
- Any other matter which the Council or special Committees considers would prejudice the Council or any person.

The *Privacy and Data Protection Act 2014* also outlines information where there is the conclusive presumption of overriding public interest against disclosure. The PDP Act also provides for application of the public interest test when considering whether information should remain restricted or be released. This type of information is contained under the following broad headings:

- Responsible and Effective Government;
- Law Enforcement and Security;
- Individual Rights;
- Judicial Processes and Natural Justice;
- Business Interests of Agencies and Other Persons;
- Environment, Culture, Economy and General Matters;
- Secrecy Provisions; and
- Legal Professional Privilege.

Documents which fall into any of these categories are considered to be Confidential Information for the purposes of this policy.

The following types of information are deemed to be confidential to Council unless or until the Council resolves to the contrary:

- Commercial in confidence information, including where the release of information would affect a company's competitive advantage (particularly including competitive tender situations);
- Information derived from government departments or ministers that have been classified as confidential;
- Information of a personal nature or about personal affairs, for example the personal details of Councillors or employee;
- Information relating to a property disposal or acquisition process where release of the information may prejudice Council;
- Financial and legal analysis where the disclosure of that information may compromise Council or someone else;
- Information relating to clients of Council;
- Information not owned or controlled by Council;
- Information that could result in any action being taken against Council for defamation;
- Information involving legal advice to Council or a legal issue or a matter before the courts;
- Information that is expressly given in confidence; or
- Information about:
  - The appointment, dismissal or discipline of employees;
  - Industrial matters affecting employees;
  - Rating concessions;
  - Contracts proposed to be made by it; or
  - Starting or defending legal proceedings involving it.

## **8. Responsibilities**

Councillors, employees, volunteers and contractors must be aware of their responsibilities and agree (either through the Oath of Office or Code of Conduct) that they should:

- Exercise due care when handling or using information acquired in their role;

- Acknowledge that there will be information that must be treated as confidential, because to release it would prejudice public trust and confidence in the integrity of Council;
- Acknowledge that disclosure of confidential information constitutes a breach of the Local Government Act 1989 and that Council may take disciplinary action for any damages caused;
- If uncertain, presume information is confidential and seek advice from the CEO or the Executive Manager Governance prior to any release of it;
- Undertake not to disclose and to use their best endeavours to prevent disclosure of confidential information to any person or organisation, specifically:
  - Avoid discussing confidential Council information with family, friends and business associates; and
  - Ensure documents containing confidential information are properly safeguarded at all times – including materials stored at private or business residences.
- Not use confidential information to gain improper advantage for themselves or any other person or body; and
- Not use confidential information to cause harm or detriment to Council or any other person or body.

## 9. Managing Confidential Information

It is important to ensure that the release of any Council Information occurs in accordance with established Council policies and procedures and in compliance with relevant legislation. Councillors and members of staff have an obligation to ensure that Confidential Information is managed appropriately. This means ensuring that:

- Confidential Information is appropriately watermarked, titled, protected, secured and stored (in accordance with Council's Policy).
- Access to and usage of Confidential Information is limited to appropriate and legitimate Council purposes, not for non-official purposes or personal use or gain.
- The release of Confidential Information may be authorised by the Chief Executive Officer, legislative requirement, or Order of a Court, Tribunal or Commission. The classification of information as 'confidential' will be reviewed at any time access is sought to that information.
- Information discussed during a closed session of a Council meeting and associated documentation must not be disclosed to others not in attendance at the closed session.
- No personal benefit is obtained, either directly or indirectly from access to any information obtained during the exercise of official functions or duties.

All confidential information provided to Councillors electronically will:

- Be marked with a heading and watermark on each page stating 'CONFIDENTIAL';
- Be attached to an email with the words 'CONFIDENTIAL' in the subject heading and carry the following statement:

*“This email and the information attached to it are CONFIDENTIAL and are provided to you for the purpose of fulfilling your functions as a Councillor. This email and the information attached to it are not to be further distributed and their content is not to be discussed with, or disclosed to, anyone other than your fellow Councillors and members of Council staff who are directly involved in their preparation and distribution.”*

Confidential reports and agendas provided to Councillors in hard copy will be:

- Printed on pink paper and marked with a heading and watermark on each page stating 'CONFIDENTIAL'.
- Handed to Councillors at a time of distribution of the agenda or agreed by Councillors; or
- Sealed in an envelope marked 'CONFIDENTIAL' and delivered to Councillors with their bags at the discretion of the CEO.
- Confidential minutes of meetings will be provided to Councillors in PDF format via email in accordance with the process for emailing confidential information.

A register of confidential information provided to Councillors will be kept, which will record:

- A brief description of the confidential information provided to Councillors; and
- The date and manner in which the confidential information was provided to Councillors.

## **10. Release of Confidential Information**

Any release of confidential information for any purpose to any person or organisation (other than to those who are entitled to the information) is a breach of the *Local Government Act 1989*.

Release of information can include:

- Orally telling any person about the information or any part of the information;
- Providing the original or a copy of documentation or any part of the documentation that is marked confidential; or
- Paraphrasing any confidential information and providing that in writing or orally.

## **11. Confidential Information at Council Meetings**

As a minimum, the following may occur relating to matters addressed at Council or Committee meetings:

- The CEO may make a declaration that information concerning a specific matter is to be treated as confidential to Council and the information will remain confidential unless or until Council resolves to the contrary (refer to process outlined in this policy under 7.1 Confidential Information);
- An item on a Council or Committee meeting agenda, including the information contained in the documentation or supporting material, that is declared confidential by the CEO is to remain confidential unless or until the Council or relevant Committee resolves to the contrary;
- If the Mayor or a Councillor in a meeting asks that a matter be treated as confidential, the Council will formally resolve as to whether all information concerning the matter is confidential;
- If a meeting of a Committee resolves an item, including the information contained in the documentation or supporting material, is to be confidential it will remain confidential unless or until the Council resolves to the contrary;
- If the Council exercises its powers to close a meeting to members of the public, all information in relation to the matters discussed during that closed meeting or the closed portion of the meeting is confidential, unless and until the Council table resolves to the contrary;
- Confidential information will be clearly identified, where possible, as confidential;
- Any information of a type deemed to be confidential is presumed to be confidential to Council and must not be released without seeking advice from the CEO or the Executive Manager Governance; or

- If there is any doubt as to whether Council considers information to be confidential, it should be assumed that Council intends the information to be confidential until the doubt is resolved at a subsequent meeting of Council.

## 12. Councillor Briefing Sessions

Councillor briefing sessions:

- Are by their very nature informal and not bound by the Meeting Procedures Local Law;
- Enable staff to present proposals and opinions to Councillors some of which may not be acceptable to Councillors and therefore never presented to Council;
- Allow Councillors and staff to have in-depth discussions and contribute freely; and
- Assist Councillors in making informed decisions if and when the issues are presented to Council for decision.

Any information or presentation provided at Councillor Briefing Sessions that is confidential in nature is to be clearly identified as such and the confidential section/s of reports/presentations are to contain a 'confidential' watermark.

The cover page of the confidential document will have the following statement:

*“This document has been designated as confidential by the Chief Executive Officer, in accordance with Section 77 of the Local Government Act 1989, as it relates to <<insert reason>> as defined under section 89 of the Local Government Act 1989.”*

Council staff must only release Council Information in accordance with established Council policies and procedures and in compliance with relevant legislation.

## 13. Reporting Breaches

Legislation makes it clear that when Councillors, employees, volunteers or contractors, in the course of carrying out their duties, receive information that is not available to the public they must not misuse the information, particularly for personal gain.

The Codes of Conduct contain provisions relating to the reporting of breaches of Council's policies and the Codes of Conduct.

## 14. Summary of Obligations

- Councillors and Council staff are expected to carry out their duties in a manner that allows the public to be informed about Council's activities and practices.
- However, in preserving Confidential Information, Council Officials:
  - Should exercise caution in the use of any information gained in the course of their employment or business with Council if disclosed may disadvantage or harm the reputation or interests of Council, Council staff, or any other person;
  - Are obliged to identify and recognise information that is confidential and act in such a manner which protects the confidential nature of the information in the best interests of Council;
  - Must act with respect and integrity in maintaining Confidential Information;
  - Should be aware that disclosure of Confidential Information, either orally, electronically, in written or any other form constitutes a breach of Council's Codes of Conduct and may result in disciplinary action or other sanctions.



## **15. Related Legislation and Policy**

This policy should be read and considered in accordance with provisions set out in:

- *Local Government Act 1989*
- *Freedom of Information Act 1982*

And the following Council policies:

- Codes of Conduct
- Governance Code
- Access to Council Information and Staff by Councillors

## **16. Review Timelines**

This policy will be reviewed when any of the following occur:

- The related information is amended or replaced; or
- Other circumstances as determined from time to time by the Council.