

Guideline



COUNCILLOR CONFIDENTIALITY

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Document Control

This page will be re-issued every time amendments are made to controlled documents. Amended documents will have their revision status and issue date updated accordingly.

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1.1		Revisions based on initial feedback. Adopted 22/08/2012 resolution number 2649	Corrin Bischoff	22/08/2014
2.0		Full review of document for 2016 Council term as per resolution number 16-20/0106 on 12/07/2016	Corrin Bischoff	30/06/2016
3.0		Full review of document for 2020-2024 council term	Business Performance	

Contents

1. Introduction	1
2. Legislative and policy context.....	1
3. Definitions.....	1
4. Confidential Information	2
5. Responsibilities of Councillors	2
6. What is confidential information?.....	2
7. Consideration of confidential material—council meetings.....	3
8. Release of confidential information	4
9. Breach of this procedure	4
10. Related Documents	4

1. Introduction

This procedure provides guidance to councillors in complying with section 171(3) of the *Local Government Act 2009* (LGA) regarding the proper handling of confidential information. This procedure aims to assist Council in determining what might be considered confidential information and how this information should be handled.

It is accepted that councillors will be in receipt of confidential information that may or may not be part of a formal Council meeting. Councillors must use Council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government.

This procedure aims to support councillors in balancing the right and duty to inform the Public and consult with constituents about Council business with the interest Council has in preventing disclosure of confidential information.

This procedure does not override an individual councillor's statutory obligations in respect of the use of information, nor does it override Council's obligations under the *Local Government Act 2009* or any other legislation or subordinate legislation to disclose or publish information where this is required by law.

This procedure applies to confidential information held by Council and councillors.

2. Legislative and policy context

Section 171(3) of the *Local Government Act 2009* sets out provisions relating to the release of confidential information by councillors. It states:

A councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the local government.

3. Definitions

Councillor briefing sessions/workshop

are non-decision making forums convened by councillors, the CEO and, as directed by the CEO, other Council officers that create an opportunity for councillors and officers to discuss matters of proposed policy or other strategic or community sensitive issues, as well as providing a forum for councillors to be made aware of issues of significance to the organisation and/or to the community.

Information

comes in any number of forms including letters, reports/documents, facsimiles, attachments, tapes, emails, electronic media, and/or other forms of information including discussions during meetings.

LGA

Local Government Act 2009

4. Confidential Information

Council operates in an environment of public accountability in which it seeks to inform the public of issues under consideration and the nature of decisions made by Council and its committees. Therefore, information should ordinarily be released to the public unless there are compelling reasons which indicate that this is not in the public interest.

At the same time, Council is conscious of the need to handle Council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government.

It is accepted that councillors will be in receipt of confidential information that may or may not be part of a formal Council meeting. It is Council's responsibility to ensure that such information is treated confidentially, so as not to harm, prejudice or compromise the interests of Council or any individual or organisation, or enable any individual or organisation to gain a financial advantage.

Whilst endeavouring in the interests of public accountability to limit the number of matters which are considered in confidential sessions, Council acknowledges that it is appropriate to consider certain matters in closed meetings.

5. Responsibilities of Councillors

Councillors must be aware of their responsibilities and agree they should:

- exercise due care when handling or using information acquired in their role as a councillor
- acknowledge that there will be information that must be treated as confidential because to release it would reduce public trust and confidence in the integrity of the Council
- acknowledge that disclosure of confidential information constitutes a breach of the LGA;
- if uncertain, presume information is confidential, and seek advice from the CEO 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.

6. What is confidential information?

The following types of information shall be deemed to be confidential to Council unless or until Council resolves to the contrary in a particular instance:

- Commercial in confidence information — including where the release of information would affect a third party's competitive advantage; this is particularly relevant in a competitive tender situation.
- 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 council staff.
- Information relating to a property disposal or acquisition process where release of the information may prejudice Council (see also section 171(1) of the LGA).
- Financial and legal analysis where the disclosure of that information may compromise Council or someone else.
- Information that could result in 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 to councillors in confidence.
- Information examined or discussed at councillor briefing sessions, unless the CEO declares that such information (or part thereof) is not confidential.
- Information about:
 - the appointment, dismissal or discipline of employees
 - industrial matters affecting employees
 - the Council's budget
 - rating concessions
 - contracts proposed to be made by Council
 - starting or defending legal proceedings involving Council
 - any action to be taken by the local government under the *Sustainable Planning Act 2009*, including deciding applications made to it under that Act.

It is acknowledged that some of the above classes of information may need to be disclosed from time to time for legal proceedings or in accordance with the *Right to Information Act 2009*.

Nevertheless, this procedure deems that as a minimum:

- 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.
- An item on a Council or committee meeting agenda – and the information contained in the documentation or supporting material – that is declared confidential by the CEO is to remain confidential unless or until Council or the committee resolves to the contrary.
- If the mayor or a councillor in a meeting asks that a matter be treated as confidential, Council will formally resolve as to whether all information concerning the matter is confidential.
- If a meeting of a committee resolves that an item – and the information contained in the documentation or supporting material – is to be confidential it remains confidential unless or until Council resolves to the contrary.
- If Council exercises its powers under section 275 of the *Local Government Regulation 2012* to close its 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 resolves to the contrary.
- Confidential information shall be clearly identified as confidential.
- Any information of a type deemed to be confidential is to be presumed by councillors to be confidential to Council and must not be released without seeking advice from the CEO.
- If a councillor has any doubt as to whether Council considers information to be confidential, the councillor is to act on the assumption that Council does so intend until the doubt is resolved at a subsequent meeting of Council.

7. Consideration of confidential material—council meetings

The following procedures will apply to the preparation of an agenda and material for consideration at meetings of the council:

1. If it is considered by the Chief Executive Officer (CEO) that the council should consider a matter in a closed meeting, the CEO will clearly indicate such recommendation on the agenda.
2. The CEO will make a declaration that all information contained in the documentation and associated material is information confidential to the council.
3. The CEO will ensure that the documentation and material is clearly marked as confidential.
4. The reason for the recommendation will be set out in the material.

The following procedures will apply to a recommendation by the CEO that a matter be considered in a closed meeting:

1. Council will consider the recommendation in open session unless to do so would result in the public release of the information concerning the matter.
2. Council shall determine by resolution whether the matter is confidential or not for the purposes of declaring that a meeting should be a closed one.
3. Upon moving that an issue be dealt with in a closed meeting, the mover must clearly state the reason for the motion.
4. Council will resolve that:
 - the matter is to be considered in a closed meeting, and all information relating to that matter is confidential to Council, or
 - the matter will be considered in open session.

Information considered at a closed meeting of Council shall remain confidential unless or until Council resolves otherwise.

8. Release of confidential information

Any release of confidential information for any purpose to any person or organisation (other than those who are entitled to the information, such as other councillors or council staff) is a breach of section 171(3) of the LGA.

Release includes:

- 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
- paraphrasing – putting into your own words – any confidential information and providing that in writing or orally.

9. Breach of this procedure

A complaint about a breach may be made by any person to the Office of the Information Commissioner (OIA). A breach of section 171(3) is considered misconduct as defined by section 150L of the LGA. The complaint may be made to the assessor orally or in writing.

10. Related Documents

Information Privacy Policy
Right to Information Policy
Code of Meeting Practice
Councillor Code of Conduct