



Blackall-Tambo

Regional Council

Confidentiality Policy

Policy Number: Admin 14	Effective Date: 16 June 2021
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Policy Compiled by: Chief Executive Officer	
Policy Approved by: Chief Executive Officer	

1. PURPOSE

This policy provides guidance to councillors in complying with sections 171 and 200 of the *Local Government Act 2009* regarding the proper handling of confidential information. This policy aims to assist Council in determining what might be considered confidential information and how this information should be handled.

2. INTRODUCTION

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 promote 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 prevent 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 to disclose or publish information where this is required by law.

3. SCOPE

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

3.1. 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.

Note-

Contravention of subsection (3) is misconduct that could result in disciplinary action being taken against a councillor.

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4. DEFINITIONS

4.1 Councillor Briefing Sessions

Councillor briefing sessions 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 of community service issues, as well as providing a forum for councillors to make aware of issues of significance to the organisation and/or to the community.

4.2 Information

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

5. POLICY STATEMENT

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 is appropriate to consider matters in closed meetings.

6. 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; and
- 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; and
- Acknowledge that disclosure of confidential information constitutes a breach of the *Local Government Act 2009*; and



- If uncertain, presume information is confidential and seek advice from the CEO prior to any release of it; and
- Undertake to not 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.

7. CONFIDENTIAL INFORMATION

The following types of information are deemed to be confidential to Council unless or until the 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 obtained by government departments or ministers that has been classified as confidential;
- Information of a personal nature or about personal affairs, for example the personal details of citizens, 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) and section 171A of the *Local Government Act 2009*);
- Financial and legal analysis where disclosure of that information may compromise Council or someone else or waive legal professional privilege;
- Information that could result in action being taken against Council for defamation;
- Information involving the provision of legal advice to Council about a legal issue or a matter before a court, commission or tribunal;
- Information that is expressly given to councillors in confidence;
- Information that is given to Council or a Council employee in circumstances where the giver of the information imposes an obligation of confidence on Council or the employee;
- Information subject to a contractual obligation requiring Council to maintain confidentiality over the information;
- Information subject to an obligation in the *Crime and Corruption Act 2001* to maintain confidentiality over the information;
- Information subject to an obligation in the *Public Interest Disclosure Act 2010* to maintain confidentiality over the information;
- Information examined or discussed at councillor briefing sessions, unless the Chief Executive Officer declares that such information (or part thereof) is not confidential;
- Information about:
 - The appointment, dismissal or discipline of employees;
 - Industrial matters affecting employees;
 - Council's budget;
 - Rating concessions;



- Contracts proposed to made by Council;
- Starting or defending legal proceedings involving Council; and
- Any action to be undertaken by the local government under the *Planning Act 2016*, including deciding an application 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 reasons or in accordance with the *Right to Information Act 2009*.

8. CONFIDENTIAL INFORMATION AT COUNCIL MEETINGS

As a minimum, the following may occur relating to matter addressed at the Council table 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.
- 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 asked 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 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 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.
- If there is any doubt as to whether Council considers the information to be confidential, it is to assumed that Council intends the information to be confidential until the doubt is resolved at a subsequent meeting of Council.

9. 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) is a breach of the *Local Government Act 2009*.

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.

10. BREACH OF THIS PROCEDURE

- A person may make a complaint about a breach by a Councillor of section 171(3) by giving notice of the complaint to the Council’s Chief Executive Officer. A breach of section 171(3) is misconduct.



- Allegations of misconduct must be referred to the Office of the Independent Assessor by the Chief Executive Officer or by a councillor who becomes aware of the misconduct.
- If the assessor decides that a councillor has breached section 171(3) of the Act, the assessor may make any one or more of the following orders or recommendation:
 - Dismiss the complaint about the conduct of the councillor;
 - If the assessor reasonably suspects the councillor's conduct is inappropriate conduct – refer the suspected inappropriate conduct to the local government to deal with; or
 - If the assessor is reasonably satisfied the councillor's conduct is misconduct – make an application to the Councillor Conduct Tribunal about the conduct; or
 - If the assessor is reasonably satisfied the councillor's conduct is inappropriate conduct and the conduct is connected to conduct of the councillor that the assessor is reasonably satisfied is misconduct – make an application to the Councillor Conduct Tribunal about the alleged misconduct and inappropriate conduct;
 - Take no further action in relation to the conduct.
- If the Councillor Conduct Tribunal decides that a councillor has breached section 171(3) of the Act, the Tribunal may make any one or more of the following orders or recommendations:
 - Order that the councillor make a public admission that the councillor has engaged in misconduct or inappropriate conduct;
 - An order reprimanding the councillor;
 - An order that the councillor attend training or counselling to address the councillor's conduct;
 - Order that the councillor pay to the local government an amount that is not more than the monetary value of 50 penalty units;
 - Order that the councillor reimburse the local government for all or some of the costs arising from the councillor's misconduct or inappropriate conduct (or both);
 - Order that the councillor is not to attend a stated number of local government meetings, up to a maximum of 3 meetings;
 - Order that the councillor is not to act as the deputy mayor or chairperson of a committee of the local government for the remainder of the councillor's term;
 - Order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor;
 - Order that the councillor forfeit an allowance, benefit, payment or privilege paid or provided to the councillor by the local government;
 - Order that the councillor is to forfeit, for a stated period, access to equipment or a facility provided to the councillor by the local government; or
 - A recommendation to the Minister that the councillor be suspended from office for a stated period or from performing particular functions of the office.

REFERENCES AND RELATED DOCUMENTS

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Sustainable Planning Act 2009*
- *Right to Information Act 2009*
- *Crime and Corruption Act 2001*

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- *Public Interest Disclosure Act 2010*
- *Information Privacy Act 2009*

VERSION CONTROL

Version 1	27 October 2010
Version 2	12 August 2014
Version 3	16 June 2020