

POLICY



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Policy title: **MANAGEMENT OF CONFIDENTIAL AND SENSITIVE INFORMATION**

Directorate: ORGANISATIONAL SERVICES

Branch: CORPORATE GOVERNANCE

Policy objective: The policy aims to:

1. Assist Council in determining what is considered to be confidential information to external parties and how this information should be handled.
2. Provide guidance to councillors in complying with section 171 of the *Local Government Act 2009* (LGA) regarding the proper handling of confidential information.
3. Provide guidelines relating to the management of confidential and sensitive information in respect of the Council's business papers, communication with councillors and employees of the Council, communication with members of the public and provide guidance to Council Officers in complying with section 200(5) of the LGA.

Policy scope:

This policy applies to all Councillors and employees and governs the release of information.

Definitions:

TERM	DEFINITION
External parties	Anybody that is <u>not</u> employed by Council. The term 'employed by Council' includes persons appointed by Council, contracted on a casual or temporary basis, consultant agreements or contractual arrangements.

1. **Policy statement:**

- (a) When an external party is requesting access to Council records, the councillor and/or Officer is to assume that all information produced, managed by or given to the Council is assumed to be confidential. Access can only be provided to external parties under the relevant legislative, local law, policy and administrative access. Where there is no guidance as to the ability to release information to the external party, the Corporate Governance Manager, Director of Organisational Services or Chief Executive Officer may make a determination to release the information.

In addition, where there is a dispute and/or confusion about access, the external party has a legal right to apply under the *Right to Information Act 2009* or *Information Privacy Act 2009* for access and this application would be assessed on its merits.

- (b) The Council should ensure the privacy and confidentiality of information which it holds and should take all reasonable precautions to ensure that personal information (about individuals), commercial-in-confidence information (about organisations), or other sensitive information is not misused, intentionally or unintentionally, either within the Council or when shared with third parties.
- (c) All personal information collected, stored and handled by the Council shall be done so in compliance with the Queensland Information Privacy Principles. Refer to council's "Privacy" policy for further information about this matter.
- (d) Any applicant, complainant or correspondent whose material is placed in the Council's records is entitled to expect that their material will be handled in a responsible and confidential manner, subject to exceptions stated in criteria 1.
- (e) The provision of information from the Council's records or material from the Council's files, not being material declared by the LGA to be open to inspection by the public or identified as requiring the applicant's or owner's written authorisation for release, may constitute failure to properly discharge such responsibility, except when provided through exceptions stated in point 1 above (eg *Right to Information Act 2009* or *Information Privacy Act 2009*).

2. Councillor information requests

- (a) Councillors, by virtue of their office, are vested under section 170A(2) (Requests for assistance or information) of the LGA with special rights and privileges in relation to access to information contained in the Council's corporate records systems, these rights and privileges must be exercised with absolute propriety at all times. For example, a councillor must not request access to records and/or documents for purposes that would give rise to a material personal interest or conflict of interest.
- (b) Section 170A(3) of the LGA lists records (files or documents) that councillors cannot request access to:
 - (i) Regional Conduct Review Panel matters
 - (ii) disclosure of records that would be contrary to an order of a court or tribunal
 - (iii) privileged from production in legal proceedings on the grounds of legal professional privilege. This would include legal advice and other documents prepared for the dominant purpose of preparing for, seeking advice or actions in legal proceedings.
- (c) In addition, Council acknowledges that section 170A of the LGA is not an exhaustive list of all information that Council produces or manages that is considered to be confidential. There are various Acts and privacy considerations that govern records collected. Council has therefore developed a list of confidential documents to assist in identifying these additional confidential records. See "Information Classified as Confidential" (ID: 6516663) for more examples of information classed as "confidential". Where a councillor is requesting access to records that could be confidential Council does not consider it a breach of section sections 13(3)(f) and 170A of the LGA for these requests to be directed to the Corporate Governance Manager, Director of Organisational Services or Chief Executive Officer in all instances for determination.

- (d) Councillors must handle information in a way that promotes and maintains the public's trust and confidence in the integrity of the Council.
 - (e) In addition, improper release of Council information by a councillor is considered a breach of section 171 (Use of information by councillors) of the LGA. As per section 177 of the LGA (Complaints referred to the department's chief executive), valid complaints about the release of confidential information under section 171(3) of the LGA are to be referred to the Remuneration and Disciplinary Tribunal (via the Chief Executive Officer of the Department of Infrastructure and Planning) for possible misconduct.
3. **Privacy complaints**
- (a) It must be noted that under the *Information Privacy Act 2009*, improper release of personal information may result in a complaint being made to the Information Privacy Commissioner and/or the Queensland Civil Administration Tribunal. Such complaints may result in a councillor or Council Officer receiving a fine ranging between \$10,000 and \$100,000.
 - (b) On balance, the indemnity provided to a councillor in section 107 of the LGA may not cover a situation where a councillor releases personal information. Councillors must always consult the Corporate Governance Manager, Director of Organisational Services, or the Chief Executive Officer, before releasing any Council records, not already in the public domain.
 - (c) Council recognises the:-
 - (i) Right and need for individual councillors to have the ability to freely express their own opinions (i.e. freedom of speech).
 - (ii) This freedom equally needs to be tempered by the requirements of the LGA, local government procedures, policies and possible actions for defamation. In other words, a councillor needs to be careful about what they say and how they state their opinion.
 - (iii) Equally, Council recognises the need for individual councillors not to misuse or misrepresent confidential information they have access to and/or publicly hold themselves out as expressing Council's policy position on a particular matter (unless authorised to do so, by Council resolution).
 - (iv) In relation to a closed meeting, a councillor is allowed to express their personal opinion about the issue under consideration to third parties. In stating their personal opinion to a third party a councillor must exercise extreme care to ensure matters, opinions or materials presented by officers and other councillors are not disclosed.
 - (v) **Councillors are encouraged to seek advice from the Corporate Governance Manager, Director of Organisational Services or Chief Executive Officer in relation to speaking publicly about a confidential matter, should the need arise.**
For example:-
 - If *Councillor XYZ* expressed an opinion in a **closed** committee meeting and *Councillor BBB* was talking to the press about the matter discussed at the closed meeting, then *Councillor BBB* could state their personal opinion about the matter, but could not disclose what *Councillor XYZ*'s views were in relation to the matter. In addition, *Councillor BBB* must not release confidential documents/information tabled at the closed meeting.

If uncertain, presume information is confidential and seek advice from the Corporate Governance Manager, Director of Organisational Services or Chief Executive Officer prior to any release.

4. Non-compliance with this policy is likely to result in disciplinary action.
5. What constitutes "improper use". Improper use of confidential information is misusing it by, for example:
 - (i) Leaking it i.e. releasing it when you know, or should reasonably know (e.g. via this policy) Council wishes to keep it confidential.
 - (ii) Using it for your own or someone else's gain, directly or indirectly, a financial advantage or personal benefit.
 - (iii) Using it to cause detriment to Council.

Refer to section 7 of the below administrative procedure for further information on the issue of confidential information.

Policy administrative procedure:

The following procedure is to be undertaken for this policy:

1. Disclosing confidential or official information

- (a) Official Council information must not be released in any of the following circumstances:
 - (i) where proper authority has not been given or obtained; (generally such authority, or advice on the appropriate authority, will be obtained from the Corporate Governance Manager, Director of Organisational Services or Chief Executive Officer)
 - (ii) where the information was supplied for a purpose that does not allow it to be disclosed; or
 - (iii) for advancing a private interest.
- (b) The types of information that should not be disclosed to others include:
 - (i) security access codes (log-on passwords)
 - (ii) information obtained of a private or personal nature about customers.
- (c) Information concerning adopted policies, procedures and decisions of the Council should be accurately imparted. If in doubt, advice should be sought from the Corporate Governance Manager.
- (d) Councillors and employees should be prudent in the use of information that they acquire by virtue of their position. Councillors and employees of the Council must:
 - (i) not advance a private interest by the use of confidential information gained in the course of public or professional duty
 - (ii) only conduct their duties in a manner that allows them and the public to remain informed about local government activity and practices
 - (iii) treat confidential reports and confidential discussion of committees and the Council with the strictest confidence
 - (i) where a Council officer has been requested to provide confidential information to a councillor(s) or the Mayor, after assessment by an officer listed in clause 6(d), a covering memo can be attached to the documentation advising that the attached information is considered to be "confidential". See "Information Classified as Confidential" (ID: 6516663) for a memo template. If the memo template is not

used, this is not taken to be definitive that the information attached is not confidential. Council information is always assumed to be confidential, particularly where there is doubt.

Examples of the types of material that should be classified and handled as confidential are listed in "Information Classified as Confidential" (ID: 6516663).

2. Management of personnel files

(a) The Council recognises that information contained in personnel files can be sensitive and is to remain confidential at all times. The following procedures document the process for the storage and security of personnel files and who is authorised to access them. Personnel files are to be handled in accordance with the following procedures:

(i) Security

Due to their confidential nature, all personnel files and filing are to be given priority in process and under no circumstances shall be left unattended or in a location where they may be accessed by unauthorised persons. Personnel files should not be retained overnight, but if this occurs then they shall be secured in a locked cabinet when not in use, or where access by unauthorised persons may not occur.

(ii) Storage

Active personnel files are stored with the People & Culture branch. Employee files shall be stored in a lockable compactus under the direct control of the People and Culture Manager.

(iii) Movement of personnel files

Movement of personnel files shall be by hand only and not through the internal delivery service.

(iv) Access to personnel files

Employees shall have access to their personnel files, and an employee from People and Culture shall retrieve the file and shall make that file available to the applicant, under supervision.

Any documentation on the personnel file shall be released to the employee provided that material shall only be copied by an employee from the People & Culture branch.

Employees who have left the service of the Council may only apply to access their file under the *Information Privacy Act 2009*.

3. Confidential files

(a) Physical confidential files must be secured in a locked cabinet when not in use, or where access by unauthorised persons may not occur.

(b) Transport of physical confidential files is to be by hand only and not through the internal delivery service.

(c) The security of confidential information within Council's electronic document management system is determined in accordance with management directive 'Records Management' (ID: 9166195).

4. Confidential documents presented to committee or Council meetings

- (a) In accordance with section 274 (meetings in public unless otherwise resolved) of the Local Government Regulation 2012, all committee meetings are open to the public unless either the Council or the committee has resolved that a meeting be closed.
- (b) In accordance with section 275 (closed meetings) of the Local Government Regulation 2012, a meeting may be closed to discuss the following matters:
- (c) the appointment, dismissal or discipline of employees; or
- (d) industrial matters affecting employees; or
- (e) the local government's budget; or
- (f) rating concessions; or
- (g) contracts proposed to be made by it; or
- (h) starting or defending legal proceedings involving it; or
- (i) any action to be taken by the local government under the *Sustainable Planning Act 2009*, including deciding applications made to it under that Act; or
- (j) other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.
- (k) any reports not covered by these prescribed criteria should not be labelled "confidential" and therefore should be discussed openly.

5. Open local government meetings

- (a) This section of the policy should be read in conjunction with the Council's policies titled "Open Local Government Meetings" and "Open Local Government Committee Meetings".
- (b) In accordance with the Local Government Regulation 2012 all items will be listed in the index to the committee agenda. However, the supporting reports for confidential items will be circulated to councillors and relevant employees.
- (c) When either a committee or the Council resolves to close a meeting, the recommendation or resolution must specify the nature of the matters to be considered and the appropriate section in the Local Government Regulation 2012 which validates such action.
- (d) The recommendation or resolution must be recorded in the committee recommendations or Council minutes and will generally take the following form:

CLOSING THE MEETING

- (a) "At this stage of the meeting, the time being (*) the meeting was closed to the public in accordance with section 275 (**) (Closing Meetings) of the Local Government Regulation 2012."
- (b) The general discussions, opinions of others and documentation presented to the closed meeting is to be kept confidential until otherwise resolved by the Council. "

* Insert time when meeting was closed.

** Insert the Act reference, which relates to the reason for closing the meeting. See Part 4 (2) of this policy for valid reasons.

- (c) The Local Government Regulation 2012 stipulates that neither a Committee nor the Council can make a resolution (other than a procedural resolution) in a closed meeting.

THIS MEANS THAT BEFORE A COMMITTEE OR THE COUNCIL CAN MAKE A RESOLUTION IN RELATION TO THE ITEMS DISCUSSED IN A CLOSED MEETING, IT MUST FIRST RESOLVE TO OPEN THE MEETING AGAIN TO THE PUBLIC.

REOPENING THE MEETING

“AT THIS STAGE OF THE MEETING, THE TIME BEING (*) THE MEETING WAS REOPENED TO THE PUBLIC IN ACCORDANCE WITH SECTION 274 (MEETINGS IN PUBLIC UNLESS OTHERWISE RESOLVED) OF THE *LOCAL GOVERNMENT REGULATION 2012.*”

* Insert time when meeting was reopened.

- (d) Once the meeting has again been opened to the public, the chairperson should report on each item discussed ‘in camera’ and the committee or the Council should make a separate recommendation or resolution in relation to each item. These recommendations or resolutions must be recorded in either the committee recommendations or the Council minutes.

6. Communication with the news media

Communications with the news media should be strictly in accordance with the administrative procedures prescribed in the Council’s “Media” policy.

7. Building applications (development application for building works)

Pursuant to section 28(3) of the Standard Building Regulation 1993, relating to Development Applications for Building Work, all documents kept by the assessment manager must be available for inspection by:

- (a) the owner of the building or structure
- (b) a person authorised in writing by the owner
- (c) a person authorised by the fire authority
- (d) a private certifier engaged to carry out building certifying functions concerning the premises to which the documents relate; and
- (e) a member of a tribunal
- (f) a person performing audits of accreditations under the Act
- (g) with the consent of the local government, (another person).

In relation to (g) the Council will not allow access unless written authority of the property owner is given.

8. Use of confidential information by individual councillors

- (a) Councillors should make themselves aware of the types of information Council deems to be confidential and the personal responsibility they have for ensuring there is no disclosure of this information.
- (b) Councillors should:
- (c) Exercise due care when handling or using information acquired in their role as a councillor.
- (d) 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 Council or cause detriment to the Council's corporate interests or the personal or financial interests of someone else.
- (e) Acknowledge that disclosure of confidential information constitutes a breach of the LGA and this policy, and that the individual councillor could face personal liability for damages caused to third parties.

- (f) If uncertain, presume information is confidential, and seek advice from the Corporate Governance Manager, Director of Organisational Services or Chief Executive Officer **prior** to any release of it.
- (g) 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
 - ensure documents containing confidential information are properly safeguarded at all times - including materials stored at private or business residences.
9. This policy deems that as a minimum:
- (a) The Corporate Governance Manager, Director of Organisational Services or Chief Executive Officer 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, including the reasons why Council deems the information not to be confidential.
- (b) If the Mayor or a councillor in a committee or Council meeting asks that a matter be treated as confidential, Council will formally resolve as to whether all information concerning the matter is confidential.
- (c) Where practicable, all confidential information shall be clearly identified as confidential.
- (d) If a councillor or officer has any doubt as to whether Council considers information to be confidential, the councillor or officer is to act on the assumption that Council considers the matter confidential until:
- (e) Advice/authorisation to the contrary has been sought from the Corporate Governance Manager, Director of Organisational Services or Chief Executive Officer.

Related policies/legislation/other documents:

Doc ID	Document Type	Document Name
-	Legislation	<i>Local Government Act 2009</i>
-	Legislation	Local Government Regulation 2012
5985445	Policy	Open Local Government Meetings, Local Government Committee Meetings and Advisory Committee Meetings
6461516	Policy	Privacy Policy
6516663	Guidelines	Information Classified as Confidential
9166195	Management Directive	Records Management