

COUNCIL POLICY

Council Confidentiality Policy

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Date of next review:	November 2028
Adopted by:	Council
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Responsible officer:	Chief Executive Officer

1. INTRODUCTION

This policy aims to protect Council information that is provided to Councillors to assist them in the performance of their role but that needs to be managed securely prior to a Council decision on the matter being made.

The Model Councillor Code of Conduct requires that Councillors diligently use Council processes to become informed about matters which are subject to Council decisions.

To assist Councillors in fulfilling this obligation, they are provided with the information necessary to enable them to fully understand matters on which decisions are to be made. This includes information relating to decisions intended to be presented to Council meetings, meetings of delegated committees and to decisions to be made by an officer under delegation.

The public availability of information leading to Council decisions is to be facilitate in accordance with the public transparency principles in the Local Government Act 2020. However, the confidentiality of this information is important in some circumstances, as the provision of information in confidence enables Council officers to provide frank and fearless views to Councillors and facilitates open and candid discussion. It is also necessary to comply with confidentiality provisions in law relating to confidential, personal or health information.

This policy provides a mechanism for the provision of information subject to confidentiality restrictions to Councillors and places controls on the disclosure of that information in accordance with the Local Government Act. This policy was based on the *Model Council Confidentiality Policy* developed and provided by the Victorian Local Governance Association.

2. DEFINITIONS

In this policy:

Chief Executive Officer	means the person appointed by a Council under section 44 of the LG Act to be its Chief Executive Officer or any person acting in that position
Confidential information	means the information defined in section 3 of the LG Act and in section 4 of this policy
Councillor	means a person who holds the office of member of a Council
Exempt matter	means matter the inclusion of which in a document causes the document to be an exempt document - as defined in section 5 of the Freedom of Information Act (Vic) 1982
Health information	has the same meaning as at section 3 of the Health Records Act (Vic) 2001
HR Act	means the Health Records Act (Vic) 2001
Internal documents	means those documents listed at section 5.4 of this policy and any documents so classified under the provisions of section 8.1 of this policy Internal documents will be marked – “Classified – Sensitive”
LG Act	means the Local Government Act (Vic) 2020
Model Councillor Code of Conduct	Means the Code of Conduct prescribed in accordance with section 139 of the LG Act
PDP Act	means the Privacy and Data Protection Act (Vic) 2014
Personal information	means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, but does not include information of a kind to which the Health Records Act 2001 applies - as defined in section 3 of the Privacy and Data Protection Act (Vic) 2014

3. PUBLIC TRANSPARENCY

The LG Act contains nine overarching governance principles, which a Council must give effect to in the performance of its role. One of the principles is that “the transparency of Council decisions, actions and information is to be ensured”.

The requirement for transparency is core to the democratic system and is one way that Councils are held accountable to their communities. However, the transparency of Council information is not absolute, and may be subject to reasonable limitations in some circumstances.

The LG Act provides that Council information be publicly available unless:

- a. the information is confidential, or

- b. public availability of the information would be contrary to the public interest.

The Privacy and Data Protection Act 2014 (PDP Act) requires that Councils collect, hold, manage, use, disclose and transfer personal information in accordance with the Information Privacy Principles (IPPs) set out in that act.

The Health Records Act 2001 (HR Act) provides that Councils must not do an act, or engage in a practice, that is an interference with the privacy of an individual.

4. CONFIDENTIAL INFORMATION

A Councillor must not intentionally or recklessly disclose confidential information, unless the Council has determined that it should be publicly available (except in the circumstances set out at section 125 of the LG Act). Confidential information is defined as:

- a. Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released,
- b. security information, being information that if released is likely to endanger the security of Council property or the safety of any person,
- c. land use planning information, being information that if prematurely released is likely to encourage speculation in land values,
- d. law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person,
- e. legal privileged information, being information to which legal professional privilege or client legal privilege applies,
- f. personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs,
- g. private commercial information, being information provided by a business, commercial or financial undertaking that relates to trade secrets, or if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage,
- h. confidential meeting information, being the records of meetings closed to the public under section 66(2)(a) of the LG Act,
- i. internal arbitration information, being information specified in section 145 of the LG Act,
- j. Councillor Conduct Panel confidential information, being information specified in section 169 of the Lg Act,
- k. Information prescribed by the regulations to be confidential information for the purposes of this definition, and
- l. Information that was confidential information for the purposes of section 77 of the LG Act 1989.

Confidential information may not be disclosed by Councillors unless it is information that the Council has determined should be publicly available in accordance with section 125 of the LG Act or where its disclosure is otherwise permitted or required by law. Disclosure in any other circumstances constitutes a breach of this policy.

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5. DOCUMENTS WHERE PUBLIC AVAILABILITY WOULD BE CONTRARY TO THE PUBLIC INTEREST

In order to support Council's deliberative process, it is necessary to provide Councillors with information which, if disclosed, would be contrary to the public interest. This includes, but is not limited to, documents which contain confidential information.

Securely managing this information is essential to good governance, in that it enables Councillors to be provided with necessary information to inform the deliberative process which might not otherwise be able to be provided.

Documents where public availability would be contrary to the public interest are classified as internal documents and will be marked as "Classified – Sensitive".

Internal documents are:

- a. documents containing confidential information,
- b. documents containing exempt matter,
- c. documents provided to Councillors in relation to Councillor briefings, including meeting agendas, officer briefing papers and their attachments, handouts and presentations,
- d. drafts of officer reports prepared for Council meetings or meetings of delegated committees, and
- e. documents classified as an 'internal document' by the Chief Executive Officer in accordance with section 8 of this policy.

Internal documents (or part thereof) may not be disclosed by Councillors unless the Council or the Chief Executive Officer has determined that they should be publicly available. Disclosure in any other circumstances constitutes a breach of this policy.

6. PERSONAL INFORMATION

Councillors may be provided with personal information about individuals in order to inform them about matters which are to be subject to Council decisions.

Personal information is defined in section 2 of this policy and includes information or opinion about an individual whose identity is or could be ascertained from that information.

A Councillor must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection, unless one of the following apply:

- a. The secondary purpose is directly related to the primary purpose of collection and the individual would reasonably expect the Councillor to use or disclose the information for the secondary purpose.
- b. The individual has consented to the use or disclosure.
- c. The use or disclosure is required or authorised by or under law.

Personal information should not be disclosed by Councillors other than in accordance with this policy. Disclosure in any other circumstances constitutes a breach of this policy.

7. HEALTH INFORMATION

Councillors may be provided with health information about individuals in order to inform them about matters which are to be subject to Council decisions.

Health information is any of the following:

- a. Information or an opinion about the physical, mental or psychological health (at any time) of an individual, or a disability (at any time) of an individual, or an individual's expressed wishes about the future provision of health services to him or her, or a health service provided, or to be provided, to an individual – that is also personal information, or
- b. Other personal information collected to provide, or in providing, a health service.
- c. Other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances.
- d. Other personal information that is genetic information about an individual in a form which is or could be predictive of the health (at any time) of the individual or of any of his or her descendants.

Health information does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of the HR Act generally or for the purposes of specified provisions of the HR Act.

A Councillor must not use or disclose health information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection, unless one of the following apply:

- a. The secondary purpose is directly related to the primary purpose of collection and the individual would reasonably expect the Councillor to use or disclose the information for the secondary purpose.
- b. The individual has consented to the use or disclosure.
- c. The use or disclosure is required or authorised by or under law.

Health information must not be disclosed by Councillors other than in accordance with this policy. Disclosure in any other circumstances constitutes a breach of this policy.

8. CLASSIFICATION OF INTERNAL DOCUMENTS

In addition to those documents listed at section 5.4, a document may be classified as an internal document by the Chief Executive Officer.

In determining whether a document should be classified as an internal document (Classified – Sensitive), the Chief Executive Officer must commence the assessment from the position of acknowledging the presumption in favour of documents remaining unclassified.

A document may be classified as an internal document only if:

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- a. its disclosure would be contrary to the public interest, and
- b. access to the document must be managed securely as a matter of good governance.

In determining whether a document should be classified as an internal document, the Chief Executive Officer must identify any relevant public interest factors favouring disclosure and non-disclosure, balance the relevant factors favouring disclosure and non-disclosure, and decide whether disclosure of the information would, on balance, be contrary to the public interest.

In making a public interest assessment, the following considerations shall be regarded as irrelevant to the assessment and not be used to influence the outcome:

- a. whether the information could cause embarrassment to, or a loss of confidence in, the Council, and
- b. the extent to which the document may be misinterpreted or misunderstood by the public.

Documents provide to Councillors that have been classified as internal documents will be clearly identified by marking them with the classification “Classified – Sensitive”.

9. RELATED DOCUMENTS

a) Council Policy

- Privacy and Data Protection Policy
- Public Transparency Policy

b) Legislation

- Freedom of Information Act 1982 (Vic)
- Health Records Act 2001 (Vic)
- Local Government (Governance and Integrity Regulations 2020 (Vic)
- Local Government Act 2020 (Vic)
- Privacy and Data Protection Act 2014 (Vic)

10. VERSION HISTORY

Version Number	Issue date	Description of change
1.0	November 2024	Initial release