

SOUTH GIPPSLAND SHIRE COUNCIL COUNCIL POLICY



South Gippsland
Shire Council

PUBLIC TRANSPARENCY		
Policy No. C75	Council Meeting Adoption Date:	22 July 2020
Agenda Item No. TBC	Revision Date:	July 2020
Corporate and Community Services	Corporate Planning and Council Business	

GOOD GOVERNANCE FRAMEWORK – PUBLIC TRANSPARENCY POLICY

Overarching Principle

The Public Transparency Policy provides guidance in the management and release of community and Council information in accordance with various pieces of legislation, while protecting the rights of individuals and enabling the effective working of government.

The Public Transparency Policy is an integral building block of the Good Governance Framework's 'Communications and Community Engagement' pillar.

1. PURPOSE

Policy C75 - Public Transparency Policy (Policy) has a two-fold purpose. The Policy supports Council in its ongoing drive for good governance and the importance of open and accountable conduct, while also responsibly managing Council and community information to protect the rights of individuals and enable the effective working of government.

This Policy considers what Council and community information will be made publicly accessible at any time, available through inspection, or upon request while limiting the rights of access to some forms of information that may not be in the public's best interest to release, or that may only be released in full or part under the *Freedom of Information Act 1982* (FOI Act).

Council must adopt and maintain a public transparency policy under s. 57 of the *Local Government Act 2020* (the Act). This policy gives effect to the *Public Transparency Principles* outlined in s. 58 of the Act.

2. SCOPE

This policy applies to Councillors and Council staff of the Council.

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3. POLICY PRINCIPLES – PUBLIC TRANSPARENCY

The objective of Council's *Public Transparency Policy* is to formalise Council's support for, and application of, the *Public Transparency Principles* in s.58 of the Act being:

- a. Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;
- b. Council information must be publicly available unless -
 - i. The information is confidential by virtue of this Act or any other Act; or
 - ii. Public availability of the information would be contrary to the public interest;
- c. Council information must be understandable and accessible to members of the municipal community;
- d. Public awareness of the availability of Council information must be facilitated.

4. Council Information

A list of available categories of information Council holds is provided in the Freedom of Information Part II Statement published in accordance the *Freedom of Information Act 1982* (FOI Part II Statement).

Part II of the *Freedom of Information Act 1982* requires government agencies and local councils to publish a number of statements designed to assist members of the public in accessing the information it holds.

Community members are encouraged to refer to the FOI Part II Statement when seeking information from Council. It is accessible on Council's website www.southgippsland.vic.gov.au. The information covered in the FOI Part II Statement includes but is not limited to:

Documents such as:

- a. Plans and Strategies adopted by Council
- b. Agendas, Reports and Minutes adopted by Council;
- c. Council adopted Policies;
- d. Public Tenders;
- e. Leases;



- f. Council leases, permits and notices of building and occupancy; and
- g. Relevant supporting documentation that informs decision making where relevant and appropriate.

In some instances, the right of access to some documents may be refused or limited by exemptions in the FOI Act.

5. Publicly Available Information

A wide range of Council information is available for public access or inspection. Outlined below are various types of information that are readily accessible to the public.

5.1 Decision Making

Council decisions are made in open and closed sessions of Council Meetings. Except in exceptional circumstances members of the public are able to attend open Council Meetings to observe the debate and resolutions made by Council. A livestream of the open Council Meetings is available through the website for those unable to attend in person.

Open Agendas, Report and Minutes of Council Meetings are available on the website. Archives of the livestreams can be accessed on the website following the meeting.

Council will occasionally have closed sessions of Council Meetings to consider reports and/or information that are deemed confidential in accordance with s.66 of the Act. Whenever possible, Council may resolve to make public some resolutions and/or documents associated with confidential matters considered in closed sessions.

Council decisions will be:

- a. Undertaken in accordance with the Act and the Governance Rules.
- b. Conducted in an open and transparent forum, unless in accordance with the provisions in the Act and Governance Rules.
- c. Informed through community engagement, in accordance with the Community Engagement Principles and the Community Engagement Policy.



- d. Made fairly and on their merits, and where any person whose rights will be directly affected by a decision of the Council, that person will be entitled to communicate their views and have their interests considered.

5.2 Council records available on Council's website

Council maintains a website that provides access to a vast range and number of documents. The following list include documents that are required to be available on the website, however there are many documents in addition to these that are also accessible.

It is important to note that some documents or registers may change intermittently, however they may only be updated periodically (twice yearly) onto the website. Community members may ask if there is a more current version of a document or register available for inspection.

- a. Agendas and minutes of Council Meetings and Additional Meetings for the past twelve months except where such agendas and minutes relate to parts of meetings which have been closed under s.66 of the Act;
- b. Agendas and minutes of open sections of Council Delegated Committee meetings held in the past twelve months except where such agendas and minutes relate to parts of meetings which have been closed under s.66 of the Act;
- c. Council adopted Annual Budget;
- d. Council adopted Council Plan;
- e. Council adopted Annual Report;
- f. Council adopted Strategies, Plans and Policies;
- g. Council Local Laws, including proposed Local Laws;
- h. Summary of each Election Campaign Donations Return until the close of the roll for the next general election;
- i. Summary of Personal Interests disclosed in the last personal interests return lodged with the Chief Executive Officer;
- j. Instruments of Delegations from Council to the Chief Executive Officer and from Council to Officers;
- k. Local Government Elections – Campaign Donation Returns;
- l. Notice of Council's intention to sell or exchange land;



- m. Any other Registers or Records required by legislation, regulations or determined to be in the public interest.

Related information that may remain on the website longer than the times specified above include:

- n. Previous open Council Meeting agendas and minutes may remain available on the website at Council's discretion;
- o. Livestreams of open Council meetings held in the past twelve months;
- p. Previous livestreams may remain available on the website at Council's discretion;
- q. Previous adopted Annual Reports.

5.3 Council records available for inspection at the Council Offices by arrangement:

Consistent with the Part II statement, Council will make various documents and registers available for inspection. These are included in the FOI Part II Statement. Examples include but are not limited to:

- a. Summary of Personal Interests in accordance with ss 135 and 136 of the Act;
- b. Submissions received under s. 223 of the *Local Government Act 1989* until its repeal or received through an equivalent significant formal community engagement process undertaken by Council;
- c. Councillors Gift Register;
- d. Council Staff Gift Register;
- e. Registers of overseas or interstate travel undertaken by Councillors or Council Staff in the past twelve months;
- r. A list of donations and grants made by Council;
- s. Registers of leases entered into by Council as lessor, including the lessee;
- t. Register of Delegations by Council made under s.11 of the Act;
- u. Register of Delegations by the Chief Executive Officer made under s.47 of the Act, including Community Asset Committees;
- v. Register of Authorised Officers;

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- w. Minutes of Special Committees established under s.86 of the *Local Government Act 1989* held over the past twelve months (until these committees are repealed under the *Local Government Act 2020*;
- x. Copies of election campaign donation returns, summaries are also available on the website;
- y. Local Laws and proposed Local Laws;
- z. Conflicts of Interest disclosed by Councillors or Council Staff;
- aa. A list of donations and grants made by Council in the past twelve months;
- bb. Terms of reference or charters for Council established Delegated Committees and Community Asset Committee appointed by the Chief Executive Officer.

5.4 Publications

Council publishes a range of newsletters, reports and handbooks for residents, businesses and visitors to council. These can be downloaded from the website or please call Council for a copy. Some of these publications are available at Council's Libraries.

5.5 Schedule of other Registers kept by Council to which there may be limited access

Council maintains other registers that may have limited public access. Council may fix reasonable fees for inspection and copying of some of these documents. These registers are included in the FOI Part II Statement.

6. Access to Information

- a. Where practicable or required by legislation, accessible information will be made available on the Council website, at the Council offices, or by request.
- b. Members of the public can make requests to the Council for information that is not available on the website. These may include requests for specific documents, personal documents relevant to their own situation, or as a formal FOI request.
- c. Consideration will be given to accessibility, privacy and public interest factors of each request. Clarification may be sought on the documents required, to assist their retrieval and to assess the suitability for them to be released outside of FOI, or in accordance with FOI requirements.



- d. Council will respond to requests for information in alignment with the Act, the FOI Act, taking into consideration the Public Transparency Principles, and this Policy.
- e. In accordance with Part II statement made under the *Freedom of Information Act 1982*.
- f. During a Council Election Period, Council will withdraw material from the website and control access to information in line with the Election Period Policy, thereby removing material that may be construed as electoral material. The documents will be restored to the website after the election is held.

7. Freedom of information (FOI) applications

The *Freedom of Information Act 1982* gives individuals the right of access to documents that Council holds. If you can't find the document you require, call us before you make an FOI application as we may be able to make it available.

8. Information Not Publicly Available

8.1 Refusal or Limited Right of Access may apply

In some instances, the right of access to some documents may be refused or limited by specific exemptions of the FOI Act and/or the *Local Government Act 2020*. As a result, these documents may not be made publicly available. This may occur for example if the information is confidential information, or if its release would be contrary to public interest, or not in compliance with the *Privacy and Data Protection Act 2014*, *Freedom of Information Act 1982* or the *Local Government Act 2020*.

These documents may fall into the following categories:

- a. Internal working documents
- b. Law enforcement documents
- c. Documents relating to trade secrets;
- d. Documents relating to legal professional privilege;
- e. Documents affecting personal privacy;
- f. Council documents deemed confidential under the Act; or
- g. Disclosure is contrary to public interest.

Further details are outlined below.

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8.2 Confidential Information

"Confidential information" is defined in s.3 of the *Local Government Act 2020*. It includes the types of information listed in the following table.

Type	Description
Council business information	Information that would prejudice the Council's position in commercial negotiations if prematurely released.
Security information	Information that is likely to endanger the security of Council property or the safety of any person if released.
Land use planning information	Information that is likely to encourage speculation in land values if prematurely released.
Law enforcement information	Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.
Legal privileged information	Information to which legal professional privilege or client legal privilege applies.
Personal information	Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released.
Private commercial information	Information provided by a business, commercial or financial undertaking that relates to trade secrets or that would unreasonably expose the business, commercial or financial undertaking to disadvantage if released.
Confidential meeting information	Records of a Council and delegated committee meetings that are closed to the public to consider confidential information
Internal arbitration information	Confidential information relating to internal arbitration about an alleged breach of the councillor code of conduct.

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Councillor Conduct Panel confidential information	Confidential information relating to a Councillor Conduct Panel matter
Confidential information under the 1989 Act	Information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i>

The Council may decide, in the interests of transparency, to release information to the public even though it is confidential under the Act. However, this will not happen if release is contrary to law, in breach of contractual requirements or if releasing the information is likely to cause harm to any person, or is not in the public interest to do so.

8.3 Public Interest Test

Council is not required to make public information if the release would be contrary to the public interest test, in accordance with the Act. When considering public interest, Council will apply the test that exists in the FOI Act.

Council, in supporting transparency and openness, recognises that the release of information is generally beneficial in building public trust in government, however it also recognises that documents may need to be withheld to enable the effective working of government in a productive way without misleading or causing unintended harm through incomplete or unfinished workings.

To this end, Council may refuse to release information if it is satisfied that the harm to the community likely to be created by releasing the information will exceed the public benefit in it being released.

Information that may be withheld because it is contrary to the public interest may include:

- Internal working documents that have not been approved or submitted to Council Meetings, especially where their release may mislead the public;
- Directions to Council staff regarding negotiations in contractual or civil liability matters, where release may damage the Council's capacity to negotiate the best outcome for the community;
- Correspondence with members of the community, where release may inappropriately expose a person's private dealings.

9. Risk Assessment



This Policy demonstrates:

- a. The commitment of Council, Councillors, and Council Staff to the principle that transparency and openness are important to building trust in democratic government. Information sharing better enables the community to actively contribute to policy formulation, participate in civic life, enhance decision making and hold its Council and the organisation accountable for making decisions in the best interest of the wider community; and
- b. The requirement for information to be managed appropriately, so that it is not inappropriately used and/or released.

10. Roles and Responsibilities

It is everyone's role to promote and facilitate access to council information in accordance with the public transparency policy and the principles of responsible information management.

Officers receiving requests for access to documents or information that is not publicly available, are to obtain Manager approval prior to release. Where uncertainty exists on the release of documents or information, the Manager is required to seek advice from their Director and the FOI Officer to determine an appropriate response.

Councillors receiving requests for access to documents or information that is not publicly available, are advised to seek advice from the Mayor and/or Chief Executive Officer, prior to release.

Party/parties	Roles and Responsibilities	Timelines
Council	Champion the commitment and principles for public transparency through leadership, modelling practice and decision-making.	Ongoing
Senior Management Team	Champion behaviours that foster transparency and drive the principles through policy, process and leadership. Monitor implementation of this policy.	Ongoing



Management Team	Manage areas of responsibility to ensure public transparency, good governance and community engagement is consistent with this policy.	Ongoing
All Staff	Public transparency is the responsibility of all employees as appropriate to their role and function. All staff respond to requests for information and facilitate provision of information in consultation with their manager and in alignment with the Policy.	Ongoing
Coordinator Risk and Coordinator Corporate Planning & Council Business	To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.	Ongoing

11. Human Rights Charter

This policy has been reviewed against and complies with section 13 of the *Charter of Human Rights and Responsibilities Act 2006*, as this Policy aligns with and provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with. It is also in line with section 18 which recognises a person's right to participate in the conduct of public affairs.

12. Non-compliance with this Policy

If a member of the community wishes to question a decision about the release of information, this should be raised directly with the officer handling the matter in the first instance.

If still not satisfied and would like to contest the decision, this can be reported to the delegated officer responsible for FOI in Council.

If still not satisfied and would like to contest the decision, this can be reported to the Chief Executive Officer.

If not satisfied with Council's response, there are other bodies that deal with these concerns being the Office of the Victorian Information Commission (www.ovic.vic.gov.au) or the Victorian Ombudsman's office (www.ombudsman.vic.gov.au).

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13. Monitoring, Evaluation and Review

Council commits to monitoring processes, information sharing and decision making to understand the overall level of success in the Policy's implementation.

A four-yearly periodic review of this policy will be undertaken to ensure any changes required to strengthen or update the policy are made in a timely manner, or earlier if changes to legislation or practices require an earlier intervention.

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SUPPORTING INFORMATION	
Legislative Provisions	Local Government Act 2020 Freedom of Information Act 1982 Charter of Human Rights and Responsibilities Act 2006 Privacy and Data Protection Act 2014 Equal Opportunity Act 2010 Protected Disclosure Act 2012 Ombudsman Act 1973
Council Supporting Documents	Council Plan 2020-2024 Governance Rules 2020 South Gippsland Shire Council Governance Framework Local Law No 2 2020 Audit and Risk Committee Charter C08 Audit Policy C65 CEO Employment and Remuneration Policy C71 Community Engagement Strategy Community Engagement Policy C06 Complaint Handling Policy C64 Councillor Access to and Request for Information Policy C66 Councillor Support and Expenditure Policy C51 Election Period Policy C30 Fraud and Corrupt Conduct Policy C19 Human Rights Policy C52 Information Privacy Policy C22 Investment of Council Funds Policy C24 Live Streaming of Council Meetings Policy C67 Policy Framework Policy C72 Procurement Policy C32 Public Interest Disclosure Guidelines Public Participation in Meetings with Council Policy C65 Rates and Charges Hardship Policy C53 Right to Make a Submission Policy CE13 Risk Management Policy and Framework C35 Social Media Policy CE75 Sound Recording of Council Meetings C48
Related Documents	Local Government Performance Reporting Framework (LGPRF) Local Government (General) Regulations 2015 Local Government (Planning and Reporting) Regulations 2014

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South Gippsland
Shire Council

File Number	D543819		
DEFINITIONS and ACRONYMS			
Closed Meetings for Confidential matters	When Council resolves to close the meeting to the general public, in order to consider a confidential matter regarding issues of a legal, contractual or personnel nature and other issues deemed not in the public interest.		
Consultation	The process of seeking input on a matter.		
Council	Means the South Gippsland Shire Council		
Municipal Community	As per defined in the Act, it Includes people who live in the municipal district of the Council, people and bodies who are ratepayers of the Council, traditional owners of the land in the municipal district and people and bodies who conduct activities in the municipal district.		
Transparency	A lack of hidden agendas or conditions, and the availability of all information needed in order to collaborate, cooperate and make decisions effectively. Importantly, “transparency” is also human rights issue: the right to have the opportunity, without discrimination, to participate in public affairs (s.58 of The Act).		
REVISION HISTORY			
Version	Approved	Approval Date Range	Sections Modified
1.0	Ordinary Council Meeting	22 July 2020	New Policy