



South Gippsland Shire Council

COUNCILLOR ACCESS TO COUNCIL INFORMATION POLICY (C66) – APRIL 2021

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GOOD GOVERNANCE FRAMEWORK – Councillor Access to Council Information Policy

Overarching Principle

Community members elect Councillors to act in good faith on their behalf and to uphold the promises made in their oath of the office. The 'Councillor Access to Council Information Policy' seeks to address the balance between providing Councillors with relevant information required to inform Council decisions and protecting Community information from inappropriate access.

The Policy provides structure to 'Pillar 2 – Culture and Behaviour' of the Good Governance Framework by providing direction in the delineation of roles and appropriate interactions between the political and organisational arms of Council.

1. PURPOSE

The purpose of this policy is to provide a consistent set of guidelines to ensure appropriate Councillor access to Council information. It aims to protect Councillors, as they undertake their responsibilities as elected representatives, from allegations of inappropriate or undue influence in respect of Council staff and to mitigate conflicts of interest arising from a misuse of position.

The Policy has been developed in accordance with Section 46(3)(c) of the Local Government Act, 2020 (the Act) that requires the Chief Executive Officer (CEO) to develop, implement and enforce policies, practices and protocol to manage interactions between Councillors and staff.

2. SCOPE

This Policy applies to the provision by Council staff of any information requested by Councillors or members of Delegated Committees, including information of a confidential or sensitive nature to which access may be limited.

It excludes publicly available Council information and CEO or Director authorised Council documents that have been provided to the current Council or Delegated Committee.

Requests for information that relate to documentation required for formal disputes between Councillors will only be provided where the information requested can be demonstrated that it has specific relevance to the matter under dispute. The Chief Executive Officer will provide relevant guidance to the delegated Officer, where required. These are matters between one or more Councillors for an Arbitration

COUNCILLOR ACCESS TO COUNCIL INFORMATION POLICY

Page 1 of 7



and/or Councillor Conduct Panel and/or VCAT matter challenging a Councillor Conduct finding.

3. POLICY PRINCIPLES

Council promotes open and honest communication between Councillors and the CEO and his/her delegated Officers, as provided for in the Councillor Code of Conduct and the Act.

The *Councillor Access to Council Information Policy* is designed to ensure all Councillors have access to the information they require to make informed strategic policy decisions in the best interests of the community. It provides a workable delineation between the role and functions of Councillors in setting the strategic direction of Council; and the administrative management and implementation of Council's strategic decisions by the CEO.

This Policy will support Councillors to make sure they act within the boundaries of their role, and avoid improperly directing or influencing a member of Council staff in the exercise of their duties, thereby protecting themselves against breaching Section 124 - Directing a member of Council staff, of the Act.

This Policy will also assist Councillors to avoid potential breaches of Section 127, 128, 130 and 131 –Conflict of Interest, of the Act, by clarifying that they must not use their position in a manner or for purposes that is contrary to their public duty. This requires Councillors to understand their responsibilities and to separate their requests for information sought out of personal interest for themselves or on behalf of others, from information that is legitimately required in their role as a Councillor.

3.1 Legislative Context

Councillors and members of Delegated Committees must at all times adhere to the provisions of the *Local Government Act 2020* relating to confidentiality and/or inappropriate use of information. Section 125 of the Act makes it unlawful for a Councillor or former Councillor to intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

Privacy laws apply not only to disclosing personal or health information to persons outside Council, but also to access and use of such information by Councillors and staff. Councillor access to Council documents is to be guided by the principle of what is required for a Councillor to undertake his or her "representative role as an elected member of Council". The information must not be used for any other purpose.

Under privacy and health records laws a Councillor can only access personal and/or health information held by Council where:

- a. The Councillor wishes to inspect or use the information for the same purpose or reason for which it was originally collected by Council, for example as part of a planning application which is currently under consideration and for which the information was supplied; or
- b. The Councillor wishes to inspect or use the information for a related purpose permitted by the legislation, for example as part of a petition or public submission, or prior to visiting a person's property for Council related purposes. This includes where:

COUNCIL POLICY

COUNCIL POLICY

COUNCIL POLICY

COUNCIL POLICY



- i. The purpose is related to the original purpose of the collection, and the use or disclosure is within the reasonable expectations of the person to whom the information relates; or
- ii. The person(s) to whom the information relates consents to the disclosure; or
- iii. The use or disclosure is required or authorised under law; or
- iv. The use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare, or a serious threat to public health, public safety or public welfare.

3.2 Council Officers' Delegated Authority to provide Councillors with Information.

The CEO delegates to the following Council Officers authority to deal with Councillors' requests for information:

- Director Performance and Innovation
- Director Economic and Community Development
- Director Sustainable Infrastructure

Where the Director considers there may be ambiguity regarding the request, they may refer the request to the Chief Executive Officer to determine.

Where a request for information is refused by the Director, the Councillor may appeal the decision in writing to the Chief Executive Officer. The Chief Executive Officer may seek additional information from the Councillor on the requirement for and proposed use of the information before providing a final decision.

3.3 Councillor Request for Information

A Councillor request for information can be received verbally or in writing; with e-mail being the preferred method.

In making a request, the Councillor will indicate the information required and the reason for seeking the information. The Officer may seek to clarify the relevance of the request to strategic directions being set by Council or agenda matters coming before Council to ensure that relevant, applicable and current information is being sought. Where a Councillor is unsure what information to request, he or she should contact the appropriate delegated Officer for assistance.

If a Councillor knows, or should reasonably know, that the information being requested is for personal interest or may be used for gain or loss for any person, they should reconsider their request in order not to misuse their position and breach Sections 127, 128, 130 and 131 of the Act.

If they determine to pursue such a request for personal interest it will be treated as a request for information from a community member. In this case the Information Privacy Act 2000, the Freedom of Information Act 1982, the Charter of Human Rights and Responsibilities Act 2006, and the Privacy and Data Collection Act 2014 may all apply.

3.4 Provision of Requested Information

Upon receiving a request, the delegated Officer must determine if the Councillor has a right to access that information; and secondly whether the information should be disseminated to all Councillors, so all Councillors have the same information.

COUNCILLOR ACCESS TO COUNCIL INFORMATION POLICY

Page 3 of 7



Where a request for information is received that relates to a current matter being considered by Council, all Councillors will be provided with the request and resulting information.

If it is appropriate to provide the information, the delegated Officer is required to:

- a. Advise the Executive Office through the Executive Assistant for capture in the Register of Councillor Requests;
- b. Ensure the requesting Councillor is provided with access to all relevant and current information;
- c. Ensure the Councillor understands any related issues around confidentiality or other sensitive matters; and
- d. If appropriate, provide any other information necessary to place the information being accessed in context.

Information requested will be provided electronically.

In some instances, a delegated Officer may arrange a time to view copies of documents with personal and health, or other sensitive information deleted. This viewing will be in the presence of the delegated Officer, or their nominated Officer and the documentation must not be copied, photographed or removed.

If it is not appropriate to provide access to the information requested, the Officer must advise the Councillor of the reasons for this decision and also advise the CEO and the Executive Assistant for capture in the Register.

3.5 Administration

The Executive Office will maintain a register of requests and publish the previous fortnight's section of the register in InfoSum weekly. Any questions regarding the register are to be directed to the Executive Office.

A Councillor may appeal to the CEO in writing if unhappy with a decision made under this Policy.

4. RISK ASSESSMENT

This Policy enables:

- a. Council, Councillors, Members of Delegated Committees, Delegated Officers and Council staff to understand their requirements and obligations under the Act;
- b. Council to demonstrate its commitment to probity in the management of Councillor requests to access corporate information;
- c. Community confidence and public trust in Council to be maintained or improved;
- d. Council to address matters that may not be explicitly captured in the Local Government Act 2020 and to put in place procedures that, when followed, will mitigate the likelihood of any breaches of the Act; in particular potential breaches of Section 123 – Misuse of Position, Section 124 – Directing a Member of Staff, 125 Confidential Information, Sections 130 and 131 –



Disclosure of Conflict of Interest by Councillors and of Section 46 – Functions of the Chief Executive Officer; and

- e. Councillors, Officers and external parties associated with South Gippsland Shire Council to mitigate the risk of fraud that may be derived through use of documents provided and to appropriately manage situations which may be regarded as unethical conduct or behaviour, illegal practices or a breach of public trust.

5. IMPLEMENTATION STATEMENT

As soon as practical after adoption of this Policy the CEO will ensure that all Councillors and staff are informed of its requirements.

Staff have a responsibility to refer any departures or deviations from this Policy to their Director and/or the CEO.

Councillors are able to take any concerns they may have regarding Policy implementation to the Mayor and/or the CEO.

The Mayor and CEO will work together to resolve any matters arising from the interface between Councillors and Officers requests.

Any breaches will be dealt with under the relevant provisions of the relevant legislation and/or under the Councillor Code of Conduct and Staff Code of Conduct.

The Policy will be published on Council's website.

The 'Register of Requests for Information' will continue to be implemented following adoption of the Policy. It will be managed through the Executive Office.

By protecting individuals' right to privacy and reputation, this Policy specifically addresses the requirements of the Charter of Human Rights and Responsibilities Act 2006 and Council's Human Rights Policy.

5.1 Publication of Policy

The Policy will be published on Council's website.

5.2 Roles and Responsibilities

This Policy will be managed predominantly through the Chief Executive Officer (CEO) and Directors.

The CEO and Directors will capture requests from Councillors for recording in the Register of Requests and determine the appropriate release of documents in accordance with the Policy requirements.

Requests are to be provided to the Executive Office for inclusion in the Register of Requests.

The Governance Department will support the CEO and Directors with relevant guidance on the release of documents requested and provision of updates to the register to Councillors through Infosum.

Councillors are responsible for ensuring their requests for information are in accordance with the requirements of this Policy and are provided, preferably in writing to the relevant member of the Executive Leadership Team.

COUNCILLOR ACCESS TO COUNCIL INFORMATION POLICY

Page 5 of 7



5.3 Human Rights Charter

This Policy is a key mechanism for providing assurance to the Council that the reasonable limitation placed on Councillors seeking to access Council information aims to balance the rights of individual Councillors with the rights of the community and other relevant considerations as required by the *Local Government Act 2020*, the *Charter of Human Rights and Responsibilities Act 2006*, *Council's Human Rights Policy* and associated obligations.

5.4 Non-compliance with this Policy

Non-compliance with this policy may result in breaches being investigated and dealt with in accordance with the Councillor Code of Conduct. Serious breaches may be referred by the Mayor or Chief Executive Officer to the Chief Municipal Inspector.

The Chief Executive Officer retains the right to seek legal advice and/or guidance from the Local Government Victoria or the Chief Municipal Inspector, as required.

5.5 Monitoring, Evaluation and Review

Council will undertake a four-yearly periodic review of this policy to ensure changes required to strengthen or update the Policy to meet changing circumstances are made in a timely manner, or earlier if changes to legislation or practices require an earlier intervention.

6. LEGISLATIVE PROVISIONS

This policy has been developed to support the Council to comply with its good governance and conduct obligations in line with various legislation, principally the *Local Government Act 2020*.

SUPPORTING INFORMATION	
Legislative Provisions	<i>Local Government Act 2020, Charter of Human Rights and Responsibilities Act 2006 Privacy and Data Protection Act 2014 Equal Opportunity Act 2010 Freedom of Information Act 1982 Information Privacy Act 2000 Privacy and Data Collection 2014 Public Interest Disclosures Act 2012</i>
Council Supporting Documents	<i>Council Plan 2020-2024 Governance Rules 2020, including the Election Period Policy C82 South Gippsland Shire Council Governance Framework Local Law No 2 2020 Councillor Code of Conduct Staff Code of Conduct Fraud and Corrupt Conduct Policy C19 Human Rights Policy C52 Information Privacy Policy C22 Public Interest Disclosure Guidelines</i>
Related Documents	
File Number	<i>D1124921</i>



7. DEFINITIONS

Council	South Gippsland Shire Council
Councillor	Is an elected member of the Council as defined by the <i>Local Government Act 2020</i> (the Act). For the purposes of this policy where the term Councillor is used, this title also covers Administrators appointed by the Minister to replace Councillors, and Members of Delegated Committees.
Chief Executive Officer / CEO	Is the Chief Executive Officer appointed by Council as defined by the <i>Local Government Act 2020</i> (the Act)
Councillor Code of Conduct	Has the same meaning as defined in s 3 and developed under Section 139 of the Local Government Act, 2020
Delegated Committee	Has the same meaning as the definition in s 3 Local Government Act 2020
Infosum	A confidential weekly internal summary of information provided to Councillors on upcoming events and items of interest that do not warrant a briefing.
Mayor	Is the Mayor elected by Council and/or Councillor(s) as defined in s.3 of the <i>Local Government Act 2020</i> (the Act). The title also covers the Administrator Chair appointed by the Minister for Local Government.

REVISION HISTORY			
Version	Approved	Approval Date Range	Sections Modified
1.0	Council Meeting	27 April 2016	New Policy
1.1	Council Meeting	21 April 2021	Revision

8. ATTACHMENT

Nil