



COUNCIL POLICY

Access to Council and Committee Meetings and Documents Code of Practice

Policy Number:	PO015		
Strategic Plan Objective:	5. Responsible Governance and Leadership		
Policy Owner:	Chief Executive Officer	Record Number:	16/13889[v7]
Responsible Officer:	Governance Officer	Minute Reference:	046/2020
Date Adopted:	08/04/2020	Next Review Date:	March 2023

1. POLICY OBJECTIVES

Yorke Peninsula Council (Council) is committed to the principles of open, accountable, transparent and informed decision-making and encourages appropriate community participation in its affairs.

Accordingly, this policy has been developed to:

- ensure appropriate public access to Council/Committee meetings and documents;
- inform the community about public access to Council/Committee meetings and documents.

2. SCOPE

This policy applies to:

- a) Council;
- b) All committees of Council (Committee(s));
- c) All Council/Committee meetings and documents.

3. DEFINITIONS

Refer to Attachment 1.

4. POLICY STATEMENT

This policy sets out the way in which meetings and documents can be accessed and includes information about:

- The relevant provisions of the Local Government Act 1999 (Act);
- Public access and participation;
- Access to meeting agendas;
- Access to meetings;

- Access to documents;
- Accountability and reporting;
- Availability of the code;
- The process for restricting public access to a meeting or a document;
- The process for excluding the public from meetings;
- When the public can be excluded;
- Use of Confidentiality Provisions;
- Review of confidentiality orders;
- How to make a Complaint.

4.1. Public Access to the Agenda for Meetings

At least three (3) Clear Days before a Council/Committee meeting (unless it is a special Council/Committee meeting), the Chief Executive Officer (CEO) must give written notice of the meeting to all Council/Committee members setting out the date, time and Place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.

Items listed on the agenda will be described accurately and in reasonable detail.

Notice of the meeting and an agenda will be placed on public display at the principal office of Council until the completion of the relevant Council/Committee meeting and published on [Council's website](http://www.yorke.sa.gov.au) (www.yorke.sa.gov.au).

Non-confidential agenda documents and reports supplied to Council/Committee members before the meeting, which are to be considered at the meeting, will be published on [Council's website](http://www.yorke.sa.gov.au) (www.yorke.sa.gov.au) as soon as practicable after being supplied to the Council/Committee members.

In the case where non-confidential agenda documents and reports are supplied to Council/Committee members at the meeting, for consideration during the meeting, a reasonable number of copies will be made available to members of the public at the meeting as soon as practicable after they are supplied to Council/Committee members. These documents will also be subsequently published on [Council's website](http://www.yorke.sa.gov.au) (www.yorke.sa.gov.au).

Members of the public may also obtain hardcopies of non-confidential agendas and relevant documents/reports for which a fee may be payable in accordance with Council's Fees and Charges Register, available on [Council's website](http://www.yorke.sa.gov.au) (www.yorke.sa.gov.au).

Agenda papers provided to the Council/Committee may include notice from the CEO that the Council/Committee may determine to consider an item in confidence, with the public to be excluded from the meeting during discussion of that item. Where such an indication is made, the CEO must specify why the confidentiality order could be made in accordance with the Confidentiality Provisions.

4.2. Public Access to Meetings

Council/Committee meetings are open to the public and attendance is encouraged, except where the Council believes it is necessary, in the broader community interest, to exclude the public from the discussion and, if necessary, the decision.

The public will only be excluded when considered proper and necessary in the case where the need for confidentiality outweighs the principle of open decision-making.

4.2.1. Information and Briefing Sessions

Council/Committee or the CEO are permitted to facilitate an Information and Briefing Session where more than one Council/Committee member is invited. A matter must not be dealt with at an Information and Briefing Session in such a way so as to obtain, or effectively obtain, a decision outside of a formally constituted Council/Committee meeting.

An Information and Briefing Session on a matter that will be included on a Council/Committee agenda must be open to the public, however, the Council/Committee or the CEO may order that the Information and Briefing Session be closed to the public if the matter listed for discussion falls within the Confidentiality Provisions.

An Information and Briefing Session will be taken to be conducted in a Place open to the public if one (1) or more Council/Committee members participate in the meeting by electronic means, provided that members of the public can hear the discussion between all Council/Committee members and subject to a Council direction that electronic means are not to be used for the purposes of Information and Briefing Session.

Whether or not an Information and Briefing Session has been open to the public, the following information must be published as soon as practicable after the holding of the session:

- The Place, date and time of the session;
- The matter discussed at the session;
- Whether or not the session was open to the public.

4.2.2. Committee Meetings and Electronic Participation

A Committee meeting will be taken to be conducted in a Place open to the public if one (1) or more Committee members participate in the meeting by electronic means, provided that members of the public can hear the discussion between all Committee members and subject to a Council direction that a Committee is not to use electronic means for the purposes of its meeting(s).

4.3. Confidentiality and Matters Where the Public can be Excluded

Before ordering that the public be excluded to enable consideration of a particular matter in confidence, the Council/Committee/CEO must, in public, formally determine if this is necessary and appropriate. In the case of a meeting where it is deemed appropriate to exclude the public, a resolution to exclude the public is then required.

All members of the public (including Employees) are required to leave the room, unless exempted by being named in the resolution as entitled to remain or, in the case of an information and briefing session, as named by the Council/Committee/CEO. The grounds on which an order to exclude the public is made will be conveyed to the public at the time of them being ordered to leave the meeting.

All members of the public (including Employees) who are participating in a Committee meeting or information and briefing session by electronic means must Disconnect and leave the meeting or information and briefing session unless exempted by being named in the resolution or, in the case of an information and briefing session, as named by the Council/Committee/CEO as entitled to remain.

Once the Council/Committee/CEO order has been made, it is an offence for a person, who knowing that an order is in force, to enter or remain in the meeting or information and briefing session room or to Connect to a Committee meeting or information and briefing session by electronic means, or fail to Disconnect from a Committee meeting or information and briefing session.

Once discussion on that particular matter is concluded, the public are then permitted to re-enter, or reconnect, to the meeting. The decision of the meeting will be made publicly known unless the Council/Committee has resolved to order that information relating to the matter remain confidential.

If there is a further matter that needs to be considered in confidence, it is necessary to repeat the process to exclude the public again.

For the convenience of the public present at meetings, matters to be considered in confidence are contained within the last section of the agenda (wherever possible), to allow other business to be dealt with and avoid the public having to leave the meeting then return with the possibility of the same process being repeated again.

A report on the use of the Confidentiality Provisions by the Council/Committee must be included in Council's annual report, as required by Schedule 4 of the Act and Regulation 35 of the Local Government (General) Regulations 2013.

4.4. Public Access to Minutes

Minutes and non-confidential Council/Committee meeting documents will be available via [Council's website](http://www.yorke.sa.gov.au) (www.yorke.sa.gov.au).

Members of the public may also obtain hardcopies of non-confidential minutes for which a fee may be payable in accordance with Council's Fees and Charges Register, available on [Council's website](http://www.yorke.sa.gov.au) (www.yorke.sa.gov.au).

4.5. Review of Confidentiality Orders

An order made under the Confidentiality Provisions must specify the duration of the order and the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. An order will lapse if the time or event specified has been reached or carried out. Once the order expires or ceases to apply, the documents automatically become public.

Orders that exceed 12 months must be reviewed annually and the Council/Committee must assess whether the grounds for non-disclosure are still relevant. A Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the Confidentiality Provisions. If there is more than one confidential order to be considered, each order must be dealt with separately and it is necessary to repeat the process.

If there are any items that require a fresh confidentiality order because the original order is about to expire, the Council/Committee must consider each matter separately against the Confidentiality Provisions and provide the reasons for the documents remaining confidential.

The conduct of the annual review can be delegated to the CEO and sub-delegated to an Employee if the Council/Committee deems it appropriate. While a Council may delegate the power to undertake an annual review, the Council cannot delegate the power to apply the Confidentiality Provisions.

Council's Confidential Orders Register R031, available via [Council's website \(www.yorke.sa.gov.au\)](http://www.yorke.sa.gov.au), has been established to assist in monitoring order expiration and review dates (in accordance with the Ombudsman SA's recommendations).

4.6. Public Access to Documents

The Act requires Councils to make available a large number of documents. Many of these are set out in Schedule 5, with further requirements also contained within other sections of the Act.

Schedule 5 documents must be published on [Council's website \(www.yorke.sa.gov.au\)](http://www.yorke.sa.gov.au). Council must also provide a person with a printed copy of any document referred to in Schedule 5 upon request, for which a fee may be payable in accordance with Council's Fees and Charges Register, available on [Council's website \(www.yorke.sa.gov.au\)](http://www.yorke.sa.gov.au).

Requests to access Council/Committee documents that are not otherwise publicly available, can be made under the Freedom of Information Act 1991. Enquiries relating to this process can be directed to Council's accredited Freedom of Information Officer on 8832 0000 or via email to Accredited FOI Officer admin@yorke.sa.gov.au. Council's Freedom of Information Statement is available on Council's website (www.yorke.sa.gov.au).

4.7. Availability

A copy of this policy is available on [Council's website \(www.yorke.sa.gov.au\)](http://www.yorke.sa.gov.au). Council will also provide a person with a printed copy upon request, for which a fee may be payable in accordance with Council's Fees and Charges Register, available on [Council's website \(www.yorke.sa.gov.au\)](http://www.yorke.sa.gov.au).

5. COMPLAINTS

Complaints about this policy or access to either a meeting or a document can be made in writing to Council's Governance Officer via Council's principal office. Complaints will be managed in accordance with Council's Complaints Policy PO147.

6. REVIEW

Council must review this policy within 12 months of the conclusion of a periodic election and as deemed necessary in consideration of any changes to legislation, relevant standards, codes and guidelines, audit findings and/or any corrective actions/controls arising from risk assessment.

7. TRAINING

Council is committed to supporting Council/Committee members and Employees in complying with this policy.

Training needs will be regularly reviewed, during induction, individual performance reviews and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines.

Council/Committee members and Employees will actively participate in training.

8. RECORDS

Records will be maintained as required by Council's Records Management Policy PO063 and relevant legislation.

9. RELATED COUNCIL POLICIES/PROCEDURES AND DOCUMENTS

- PO037 Internal Review of a Council Decision Policy
- PO057 Community Engagement Policy
- PO147 Complaints Policy
- R011 Fees and Charges Register
- R031 Confidential Orders Register
- Yorke Peninsula Council Freedom of Information Statement

10. REFERENCES AND LEGISLATION

- Freedom of Information Act 1991
- Local Government Act 1999
- Planning, Development and Infrastructure Act 2016
- LGA Access to Council and Committee Meetings and Documents Model Code of Practice
- Ombudsman’s “In the Public Eye” audit report

11. COUNCIL DELEGATION

Details of Delegation:	Multiple
Delegate:	CEO

12. VERSION HISTORY

Version No	Issue Date	Description of Change
1	07/04/2003	New Policy.
2	08/04/2008	Full Revision.
3	08/06/2010	Full Revision.
4	12/02/2014	Full Revision.
5	08/04/2015	Full Revision.
6	12/06/2019	Full Revision.
7	08/04/2020	Legislative Update due to COVID-19.
8		Full Revision.

ATTACHMENT 1: DEFINITIONS

Term/Reference	Definition
Clear Days	<p>The time between the giving of the notice of a meeting and the day of the meeting, but excluding both the day on which the notice was given and the day of the meeting. Saturdays, Sundays and public holidays are taken into account. If notice is given after 5:00pm on a day, the notice will be taken to have been given on the next day. For example, notice given on a Thursday at 2:00pm for a meeting to be held on the following Monday, the Clear Days are Friday, Saturday and Sunday.</p>
Confidentiality Provisions	<p>In accordance with the requirements of section 90(2) and 91(7) of the Act a Council/Committee may order that the public be excluded in order to receive, discuss or consider any of the following information or matters in confidence (references to Council below also include Committees):</p> <ul style="list-style-type: none"> (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead); (b) information the disclosure of which— <ul style="list-style-type: none"> (i) could reasonably be expected to confer a commercial advantage on a person with whom Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of Council; and (ii) would, on balance, be contrary to the public interest; (c) information the disclosure of which would reveal a trade secret; (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which— <ul style="list-style-type: none"> (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest; (e) matters affecting the security of the Council, members or Employees of the Council, or Council property, or the safety of any person; (f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;

PO015 – Access to Council and Committee Meetings and Documents Code of Practice Policy

Term/Reference	Definition
	<p>(g) matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;</p> <p>(h) legal advice;</p> <p>(i) information relating to actual litigation, or litigation that the Council or Council Committee believes on reasonable grounds will take place, involving the Council or an Employee of the Council;</p> <p>(j) information the disclosure of which—</p> <p style="padding-left: 20px;">(i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an Employee of the Council, or a person engaged by the Council); and</p> <p style="padding-left: 20px;">(ii) would, on balance, be contrary to the public interest;</p> <p>(k) tenders for the supply of goods, the provision of services or the carrying out of works;</p> <p>(the Act does not contain an “l”)</p> <p>(m) information relating to a proposed amendment to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the Planning, Development and Infrastructure Act 2016 before the draft instrument or amendment is released for public consultation under that Act;</p> <p>(n) information relevant to the review of a determination of a Council under the Freedom of Information Act 1991;</p> <p>(o) information relating to a proposed award recipient before the presentation of the award.</p> <p>The Local Government Act provides a definition of “personal affairs” which includes a person’s:</p> <ul style="list-style-type: none"> • financial affairs • criminal records • marital or other personal relationships • personal qualities, attributes or health status • employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person, <p>but it does not include the personal affairs of a body corporate.</p>

PO015 – Access to Council and Committee Meetings and Documents Code of Practice Policy

Term/Reference	Definition
	<p>This is an inclusive (not exhaustive) list of personal affairs matters and other matters may also constitute a person’s personal affairs.</p> <p>With respect to matters on a Council agenda, where a person provides information to the Council and requests that it be kept confidential, Council is not able to even consider this request unless the matter is one that falls within section 90(3). If this is the case, Council will then be in a position to consider the request on its merits.</p> <p>In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may:</p> <ul style="list-style-type: none"> • cause embarrassment to the Council or Committee concerned, or to members or Employees of the Council; • cause a loss of confidence in the Council or Committee; • involve discussion of a matter that is controversial within the Council area; or • make the Council susceptible to adverse criticism. <p>If a decision to exclude the public is taken, the Council/Committee is required to minute the making of the order and specify:</p> <ul style="list-style-type: none"> • the grounds on which it was made; • the basis on which the information or matter falls within the ambit of each confidentiality ground; and • (if relevant) why receipt, consideration or discussion of the information or matter in public would be contrary to the public interest. <p>Once discussion of the matter is concluded, the meeting must then consider if it is necessary to make an order identifying the document(s) (or parts of the document(s)) associated with that item (including minutes) that are to remain confidential.</p> <p>If the meeting determines that it is necessary to keep a document(s) (or parts of document(s)) confidential, then a resolution for an order to this effect is required in accordance with section 91(7) of the Local Government Act.</p> <p>The Council/Committee can only resolve to keep minutes and/or documents confidential under section 91(7) if they were considered in confidence at a Council/Committee Meeting pursuant to sections 90(2) and 90(3).</p> <p>The Council will not consider a number of agenda items “in confidence” together i.e. en bloc. It will determine each item</p>

PO015 – Access to Council and Committee Meetings and Documents Code of Practice Policy

Term/Reference	Definition
	<p>separately and consider the exemptions relevant to each item.</p> <p>Once discussion of the matter is concluded and the public have returned, the decision in relation to the matter will be communicated unless Council has resolved to order that the resolution remain confidential. Details relating to any order to keep information or a document confidential in accordance with section 91(7) will also be made known.</p> <p>In accordance with section 91(8), the Council/Committee must not make an order to prevent:</p> <ul style="list-style-type: none"> • the disclosure of the remuneration or conditions of service of an Employee of the Council after the remuneration or conditions have been set or determined; or • the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the Council as to why a successful tenderer has been selected; or • the disclosure of the amount or amounts payable by the Council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the Council after the contract has been entered into by all parties to the contract; or • the disclosure of the identity of land that has been acquired or disposed of by the Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council. <p>Where keeping a document confidential is considered necessary, a resolution to this effect is required which shall include:</p> <ul style="list-style-type: none"> • the grounds for confidentiality; and • the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed – if the order has a duration of more than 12 months, the order must be reviewed at least once in every year; and • (if applicable) whether the power to revoke the order will be delegated to an Employee of the Council. <p>In all cases the objective is that the information be made publicly available at the earliest possible opportunity and that the community is informed of any Council/Committee order and the associated implications.</p> <p>There is no legal requirement to resolve to “come out of confidence” or to go back into “public session”. The public</p>

PO015 – Access to Council and Committee Meetings and Documents Code of Practice Policy

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	may and should be invited to re-enter the meeting when consideration of the relevant agenda item has concluded. The public are also entitled to be present for the debate and decision on whether any subsequent item should be considered in confidence.
Connect	Means being able to hear and/or see the meeting.
Disconnect	Means to remove the connection so as to be unable to hear and see the meeting or make a recording of the meeting.
Employee(s)	All personnel undertaking tasks/duties for and/or on behalf of the Council, including persons employed directly by the Council in a full time, part-time or casual basis under an employment contract, volunteers, contractors, agency personnel and work experience placements.
Nominated Person	A person nominated in writing by the Chief Executive Officer.
Place	Includes an electronic location (such as a virtual meeting room).