



COUNCIL POLICY

Elected Member Access to Information

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| Policy Number: | PO163 | | |
| Strategic Plan Objective | 5. Responsible Governance 5.2 Effective Leadership and informed decision making | | |
| Policy Owner: | CEO | Record Number: | 17/91731[v2] |
| Responsible Officer: | Executive Assistant to CEO and Mayor | Minute Reference: | 030/2018 (14/02/2018) |
| Date Adopted: | 14/02/2018 | Next Review Date: | February 2021 |

1. POLICY OBJECTIVES

Elected Members require access to a range of information and documents in order to responsibly perform and discharge their official functions and duties set out in the Local Government Act 1999 (**the Act**). This policy seeks to facilitate appropriate access by Elected Members to relevant documents held by Council.

This policy aims to:

- provide all Elected Members with equal access to information, to assist them in performing and effectively discharging their official functions and duties and to make informed decisions, in accordance with Section 61 of the Act.
- balance the important considerations of access to information by Elected Members, and the need to carefully manage sensitive, personal, private and confidential information, the disclosure of which may cause detriment to the Council, the community or another party.
- set out the agreed procedure for the Chief Executive Officer (CEO) to follow when responding to requests for information from Elected Members and ensure the appropriate management of sensitive, personal, private and confidential information.
- facilitate informed decision making in an environment of mutual trust and respect for the respective functions, roles and responsibilities of Elected Members and staff.

2. SCOPE

This policy applies to Elected Member requests for information to staff. It is not expected that Elected Members will require access to personal information regarding employees to perform or discharge their official functions and duties. The Act does provide that Elected Members may make a request to the CEO to inspect the R005 Employee Register of Interests (Section 118 of the Act).

This policy does not limit the rights of an Elected Member to use the Questions on Notice (Reg. 9) or the Motion (Reg. 12) provisions of the Local Government (Procedures at Meetings) Regulations 2013, to seek answers to questions, or to move a motion that a report be prepared on certain issues. Nor does this policy restrict an Elected Member from exercising their rights to use the provisions of the Freedom of Information Act 1991 to seek access to certain documents held by Council.

3. DEFINITIONS

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| Confidential Information | A document that Council has ordered be kept confidential, or that the Elected Member should reasonably know is information that is confidential, including information that is considered by Council in confidence. |
| Detriment | The act of causing disadvantage or damage (to a person or the interests of the Council); the state of being harmed or damaged. |

4. POLICY STATEMENT

4.1. Legislation and Compliance

Section 61 of the Local Government Act 1999 ‘Access to information by Members of Councils’ states:

1. a member of a council is entitled at any reasonable time, in connection with the performance or discharge of the functions or duties of the member (whether under this or another Act, without charge, to have access to any relevant council document, including (but not limited to):–
 - a. A copy of a written contract entered into by the council, or a copy of a document relating to a contract that is proposed to be entered into by the council;
 - b. Accounting records kept by the council;
 - c. Financial statements and other documents prepared by the council under Chapter 8.
2. a request for access to a document under subsection (1) should be directed to the Chief Executive Officer, or another officer specified by the Chief Executive Officer for the purposes of this section.
3. the Chief Executive Officer or another officer providing access to a document under subsection (1) may indicate to the member that information contained in the document is, or should be considered as, confidential.

Section 59 of the Act sets out the role of a Council Member as follows:–

(1) The role of a member of a council is:—

(a) as a member of the governing body of the council:—

- (i) to participate in the deliberations and civic activities of the council;
- (ii) to keep the council's objectives and policies under review to ensure that they are appropriate and effective;
- (iii) to keep the council's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review;
- (iv) to ensure, as far as is practicable, that the principles set out in section 8 are observed;

(b) as a person elected to the council—to represent the interests of residents and ratepayers, to provide community leadership

and guidance, and to facilitate communication between the community and the council.

(2) A member of a council may, with the principal member's authorisation, act in place of, or represent, the principal member.

(3) A member of a council has no direct authority over an employee of the council with respect to the way in which the employee performs his or her duties.

Section 62 (3) and (4) of the Act covers improper use of information and states:

1. a Member or former Member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of their position as a Member of the Council to gain, directly or indirectly, an advantage for him or herself, or for another person, or to cause detriment to the Council.
2. a Member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself, or for another person or to cause detriment to the Council.

Maximum penalty: \$10,000 or imprisonment for two years.

Note a breach of the Local Government Act 1999 – as set out above is a matter to which a criminal penalty attaches. Alleged breaches should be reported to the Office for Public Integrity refer to PO148 Fraud and Corruption Prevention Policy.

Section 251 (1) of the Criminal Law Consolidation Act 1935 addresses abuse of Public Office.

Code of Conduct for Council Members

States that Council Members must:

3. Not release or divulge information that the Council has ordered be kept confidential, or that the Council Member should reasonably know is information that is confidential, including information that is considered by Council in confidence.

Note: A breach of the Code of Conduct where there is reasonable suspicion or serious or systemic misconduct in public administration should be reported to the Office of Public Integrity also refer PO148 Fraud and Corruption Prevention Policy

4.2. Request for Access to Council Information or Documents

An Elected Member will be provided access to all documents held by Council that are relevant to the performance and discharge of their functions and/or duties except where the CEO is prohibited by law from providing access to the document.

All Elected Member requests for Council documents must be directed in writing to the CEO. Elected Members are required, where practical, to make any requests for documents in a timely and considerate manner, to minimise the impact on staff/public resources.

To ensure that requests are dealt with as quickly and efficiently as possible a request must:

- be in writing;

- clearly identify the document/s being sought with enough detail for the document/s to be identified and retrieved;
- outline the Elected Member/s reason(s) for the request relevant to the performance or discharge of their functions and duties as set out in the Act.

4.3. Processing the Request

- 4.3.1 Except where a document is not connected with the performance or discharge of an Elected Member's functions and duties, or the CEO is prevented by law from providing access to the document, an Elected Member will be provided access to document/s if they are held by Council. Where access to a document is not provided, the reason for not providing access should be given to the Elected Member in writing if practicable.
- 4.3.2 The CEO may require a Member to demonstrate the relevance of the information sought to the performance or discharge of his or her official functions or duties before access is provided. Elected Members do not have unfettered access to Council documents, but are only entitled, within a reasonable time, to have access to any relevant Council document in connection with the performance or discharge of their official functions or duties.
- 4.3.3 In some cases it may be appropriate for the Council as a whole to consider the application for access to information. In those instances the Elected Member who made the request will be notified by the CEO that the matter will be referred to the Council.

4.4. Provision of Information/Document

The form of access to the document/s may not necessarily be as requested by the Elected Member on the basis of administrative efficiency, nature of the document and the degree of sensitivity in relation to the document/s. Access to information will be in accordance with statutory requirements and best practice from a probity and process perspective. In some cases access may be limited to view only, at a mutually convenient time at the Principal Council office.

Where the information being sought is not in the form of an existing Council document/s, the CEO may elect to treat the request as a request for a report to Council. Such request could only be actioned by the CEO in accordance with a Council resolution.

In the interests of transparency and accountability it will generally be the case that a document provided to an Elected Member pursuant to a request under this policy will be provided to all Elected Members along with the name of the Elected Member requesting the document.

The CEO will indicate to Elected Members if information contained in a document to which access has been provided in accordance with this policy is, or should be considered as confidential.

Elected Members must not use confidential information to gain an advantage for themselves or for any other person or body, in ways which are inconsistent with their obligations to act impartially, or to improperly cause harm or detriment to any person or organisation.

4.5. Grievance Procedure

If an Elected Member is dissatisfied with the CEO's decision regarding access to a document requested by the Elected Member under this Policy, the matter may be referred to the Mayor, for the Mayor to seek appropriate advice which will be provided to the Elected Members to enable a decision to be made by the elected body of the Council.

An Elected Member may also lodge a complaint with the Ombudsman.

4.6. Tabling of Information

Section 18 of the Local Government (Procedures at Meetings) Regulations 2000 (the Regulations) makes provision for an Elected Member to require the CEO to table a document relating to a motion before a meeting.

Note: If an EM invokes this provision, the only aspect for the Mayor to determine is when the document must be tabled.

The CEO is responsible for actioning such requests and determining what other staff involvement may be necessary to ensure delivery of the requested document/s to Council for tabling.

The CEO may, in tabling a document, indicate that in his or her opinion consideration should be given to dealing with the document on a confidential basis under Section 90 or 91 of the Act.

5. REVIEW

This policy will be reviewed every three years and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines.

6. TRAINING

Elected Members are provided with appropriate training to enable them to meet the requirements of this policy. Training needs will be reviewed annually as part of Council's Elected Member Training Plan and as necessary in consideration of any changes to legislation and relevant standards, codes and guidelines.

7. RELATED COUNCIL POLICIES AND DOCUMENTS

PO037 Internal Review of a Council Decision Policy
PO135 Elected Members Training and Development Policy
PO147 Complaints Policy
PO148 Fraud and Corruption Prevention Policy

8. REFERENCES AND LEGISLATION

Local Government Act 1999
Local Government (Procedures at Meetings) Regulations 2013
Freedom of Information Act 1991
Section 251 (1) Criminal Law Consolidation Act 1935
Statutory Code of Conduct for Council Members

9. COUNCIL DELEGATION

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| Details of Delegation: | Chief Executive Officer |
| Delegate: | Nil |

10. VERSION HISTORY

| Archived Policy Name | Policy Number | Date Adopted | Last Reviewed |
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| Elected Member Access to Information Policy | PO163 | 14/02/2018 | |
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