

ITEM 10 POLICY REVIEW: USE OF CONFIDENTIAL INFORMATION POLICY - POST EXHIBITION

This report presents a summary of submissions received on the Draft revised Use of Confidential Information policy.

RECOMMENDATION

1. Council note the report on the revised Use of Confidential Information policy – post exhibition, and the submissions made to the draft;
2. The revised Use of Confidential Information policy be adopted.

REPORT AUTHORISATIONS

Report of: Clare Phelan, Manager Governance and Information (Acting)

Authorised by: Kylee Cowgill, Director Corporate Services - Connected and Engaged City (Acting)

ATTACHMENTS

- 1 Draft revised Use of Confidential Information policy

BACKGROUND

The Use of Confidential Information policy incorporates the provisions of the Codes of Conduct relating to the way in which Council all officials use information they have access to through their role at Council.

The improper use of confidential information can constitute corrupt conduct as defined by the *Independent Commission Against Corruption Act 1988*. It is therefore considered essential that Council develop and promote policies relating to the use of confidential information to manage such risks.

The Use of Confidential Information Policy was first developed and adopted in 2008 by the Executive Management Committee as a management policy. This policy sits within the suite of supporting policies to the Codes of Conduct. The policy does not set out to define what is and what is not confidential (or personal) information, however it sets out the basis on which Council officials will manage Confidential Information in accordance with the Codes of Conduct.

Council at its meeting on 8 May 2017 resolved to place the draft revised Use of Confidential Information policy on public exhibition for a period of 28 days, inviting submissions from the public. The policy was exhibited from 16 May to 19 June 2017.

A total of three submissions were received during the engagement period.

Summary of issues raised in submissions	Council response
Volunteers are specifically listed under policy coverage but not in the definition of a Council Official.	Supported - Policy amended to include "volunteers" in definition of Council Official.
Request to include ratepayers and residents of Wollongong in the statement on page 4 relating to the disclosure of confidential information causing disadvantage or harm the reputation or interests of Council or Council officials.	Supported - Policy amended to include "or any other person".
Request removal of statement relating to collection of confidential materials distributed at a councillor briefing session.	No impact - Statement can be removed from this policy.

Summary of issues raised in submissions	Council response
Policy refers to conditions outlined in the Local Government Act and other Council policies but does not list them in this policy.	Not supported - For the purposes of this policy, making reference to the source Act or other policy documents is considered appropriate.
Policy refers to section 14 of the GIPA Act 2009, using headings only, rather than the details in the Table under section 14.	Not supported - For the purposes of this policy, making reference to the source Act or other policy documents is considered appropriate.
Policy does not refer to the section of the GIPA Act which lists matters under the Public Interest considerations in favour of disclosure.	Not supported - Access to Council information applications are subject to the <i>Public Access to Documents and Information Held by Council</i> policy.
Claims the draft policy includes unreasonable restrictions on the use of information from briefings	Not supported - The Codes of Conduct state that Council officials must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation. Relevant policy includes the <i>Public Access to Documents and Information Held by Council</i> policy under which access to Council information applications are considered. The assessment of, and response to, requests to access Council information is an operational function.
Query where “information discussed during a closed session of a Council meeting and associated documentation must not be disclosed to others not in attendance at the closed session [S664(1A) LG Act] “.	Not supported - Section 664(1A) of the Local Government Act 1993 states that if part of a meeting of a council or a committee of a council is closed to the public in accordance with section 10A (1) of the Act, a person must not, without the authority of the council or the committee, disclose (otherwise than to the council or a councillor of the council) information with respect to the discussion at, or the business of, the meeting. This allows the General Manager to implement, without undue delay, lawful decisions of the council as outlined in s335(b) of the Act. It is appropriate that this is done by conveying the decision of Council to staff to implement on his behalf.
Query why Wollongong City Council does not regularly meet in Committee of the Whole	Not supported - Each term of Council has the opportunity to review its meeting and briefing schedules and may form Committees as it considers appropriate.
The draft policy imposes a blanket classification of ‘confidential’ to all information provided at Councillor briefings.	Not supported - The policy does not assume all Councillor briefings are confidential, however Councillor briefings are not open to the public or subject to specific provisions of the Local Government Act, the Local Government Regulation or Council’s Code of Meeting Practice. Councillor briefings and workshops are conducted

Summary of issues raised in submissions	Council response
	in a manner appropriate to their purpose. They are an opportunity for Councillors to receive information from staff on matters of significance or complexity that are to be the subject of a staff report for determination by Council at a subsequent Council meeting or of current interest to Council.
Councillor briefings are a Committee of the Council (a Committee of the Whole).	Not supported - Councillor briefings and workshops are not Council or Committee of Council meetings; are facilitated by staff; and are not decision-making forums. Agendas for briefings are published on Council's website.
The definition of Confidential Information on page 2 is a major concern. It is unclear who decides what information will be withheld, and it should only refer to information per s10A of the LG Act and details in s14 of GIPA Act, presumably as determined by the General Manager.	Not supported - The purpose of the policy is not to define all that is and is not confidential information. This policy sets out the basis on which Council officials will manage Confidential Information in accordance with the Codes of Conduct.
Draft policy reinforces the lack of Committee meetings.	Not supported - Each Term of Council has the discretion to conduct Committee meetings in addition to Council meetings.
Draft policy ignores the criticism of the conduct of Councillor briefings highlighted in a Councillor's Notice of Motion 27 January 2015	<p>Not supported - The Notice of Motion presented to Council requesting Councillor briefings be renamed Committee of Council Meetings, coming under meeting provisions of the Local Government Act and Regulation, and Council's Code of Meeting Practice was subject to an Amendment, whereby it was resolved by the majority of the Council that –</p> <ol style="list-style-type: none"> 1 Agendas for Briefing Sessions be made publicly available via the website subsequent to the holding of Briefing Sessions. <i>(Implemented since 2 February 2015)</i> 2 The options for improving Briefing Sessions be an item for a future briefing session. <i>(presented by the General Manager at a briefing session on 6 October 2015.</i> 3 Council commission the services of an independent external consultant on probity and compliance to assess the conduct of Councillor Briefing Sessions to ensure they comply with the Local Government Act. <i>(Council commissioned Sparke Helmore solicitors to review the way in which Council conducted its briefing sessions. The review found that briefing sessions are conducted in</i>

Summary of issues raised in submissions	Council response
	<i>an appropriate manner.)</i>
<p>Concerns the policy:</p> <ul style="list-style-type: none"> may not ensure that Councillors have access to all information necessary for them to exercise their statutory role as a member of the governing body of Council. may not enable councillors to carry out their role as defined in the Local Government Act 1993. 	Not supported - The <i>Councillor Access to Council Information and Staff</i> policy addresses these issues.
Concerns the policy may not enable the General Manager to fulfil his responsibilities under s335 of the Act.	Not supported - The provisions of the Use of Confidential Information policy enhances the General Manager's ability to fulfil their statutory obligations under s335 of the Act, particularly in relation to ensuring the Lord Mayor and other Councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions.

PROPOSAL

This draft policy was formerly a Management policy, however as it relates to all Council officials it is considered most appropriately defined as a Council policy, with the opportunity for Council review and adoption. Other than the change of policy type, no substantial changes have been made or are recommended to the policy, with a minor administrative change to provide clarification that contractors are covered by Council's Code of Business Ethics which includes a clause directly relating to confidentiality.

CONSULTATION AND COMMUNICATION

The draft Use of Confidential Information policy was placed on public exhibition from 16 May to 19 June 2017, with submissions invited from the public.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 goal "We are a creative and engaged City".

It specifically delivers on core business activities as detailed in the Governance and Administration Service Plan 2016-17.

CONCLUSION

The Use of Confidential Information policy has been reviewed, and the draft placed on public exhibition. Submissions have been carefully considered. It is recommended Council note the submissions, and adopt the revised Use of Confidential Information policy.



ADOPTED BY COUNCIL: [TO BE COMPLETED BY CORP SUPPORT]

BACKGROUND

Council operates in an environment which requires compliance with good governance principles including those of public accountability and transparency. Council seeks to inform the public of issues under consideration and the nature of the decisions made by Council. Accordingly, Council officials are expected to perform their functions and duties in a manner that allows the public to be informed about Council's activities and practices.

However, Council acknowledges there are certain documents and types of information that are confidential and must not be disclosed to third parties.

OBJECTIVE

The main objectives of this policy are to –

- ensure that Councillors, staff, volunteers and contractors are made aware of their obligations, responsibilities and duties concerning access to and disclosure of, Confidential Information associated with any Council business or activities
- provide guidance to Councillors and staff in identifying, assessing, managing and reporting on the use and/or misuse of Confidential Information.

POLICY STATEMENT

The NSW Local Government Act 1993 (the 'Act'), requires all councils to adopt a Code of Conduct that is consistent with the provisions and minimum standards as set out in the Local Government Model Code of Conduct.

This policy sets out the basis on which Council officials will manage Confidential Information in accordance with the Codes of Conduct.

POLICY REVIEW AND VARIATION

- 1 Council is to have opportunity to review and adopt, at least once during its Term, each Council policy.
- 2 A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

USE OF CONFIDENTIAL INFORMATION

COUNCIL POLICY

STATEMENT OF PROCEDURES

1 POLICY COVERAGE

This policy is applicable to any person covered under Council's Codes of Conduct, including the following:

- Councillors, including the Lord Mayor and Deputy Lord Mayor
- Council Staff (regardless of classification)
- Delegates of Council, including volunteers
- Members of Council's committees, reference groups and working parties

Contractors to Council are required to comply with Council's Code of Business Ethics.

2 DEFINITIONS

Confidential Information means any information with restrictions placed on the communication or dissemination of that information¹.

Confidential Information may include information provided 'in-confidence', whether oral, written, electronic or in any other form, which is used to inform policy positions, is only to be internally distributed and is not to be shared.

Council Official means the Lord Mayor, Councillors, staff, delegates of Council, and members of Council's committees, reference groups and working parties, and volunteers.

Staff means all employees regardless of classification.

LG Act means the Local Government Act 1993.

The Regulation means the Local Government (General) Regulation 2005.

GIPA Act means the Government Information (Public Access) Act 2009.

All other definitions set out in the Local Government Act 1993 (Act) and Council's Codes of Conduct apply equally to this policy.

3 STATUTORY PROVISIONS

Section 10A of the *Local Government Act 1993* allows Council or a Committee of Council to close to the public so much of its meeting as comprises the discussion of a range of matters as set out in the section. Documents and information considered during the closed parts of a meeting are Confidential Information for the purposes of this Policy.

Reports which are to be dealt with in closed session will be distributed electronically via individual mailboxes to Councillors, Executive and staff nominated by the General Manager. The General Manager will provide directly to the Corporate Support Services Unit a list of staff members who are to receive information to be discussed in closed session.

Council's Code of Meeting Practice incorporates the requirements of the LG Act, the Regulations, and Council's Codes of Conduct, and should be referred to for further detail.

Disclosure of Confidential Information associated with a closed meeting of Council is a breach of the LG Act as well as Council's Codes of Conduct and associated policies.

Schedule 1 of the GIPA Act outlines information where there is the conclusive presumption of overriding public interest against disclosure. The GIPA Act also provides for application of the public interest test when considering whether information should remain restricted or be released. This type of information is contained under the following broad headings: Responsible and Effective Government; Law Enforcement and Security; Individual Rights; Judicial Processes and Natural Justice; Business Interests of Agencies and Other Persons; Environment, Culture, Economy and General Matters; Secrecy Provisions; and Legal Professional Privilege. Documents which fall into any of these categories are considered to be Confidential Information for the purposes of this policy.

¹ ICAC Website: [Preventing Corruption / Knowing your Risks / Confidential Information](#)

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COUNCIL POLICY

4 COUNCILLOR BRIEFING SESSIONS AND INFORMATION NOTES

Councillor briefing sessions:

- are by their very nature informal and not bound by the Code of Meeting Practice
- enable staff to present proposals and opinions to Councillors some of which may not be acceptable to Councillors and therefore never presented to Council
- allow Councillors and staff to have in-depth discussions and contribute freely
- assist Councillors in making informed decisions if and when the issues are presented to Council for decision.

Any information or presentation provided at Councillor Briefing Sessions that is confidential in nature is to be clearly identified as such and the confidential section/s of reports/presentations are to contain a 'confidential' watermark. ~~Any confidential documentation distributed at the session will be collected at the conclusion of the presentation.~~

Following the Briefing Session the relevant Director or Divisional Manager is to make a 'public interest' determination in relation to the release of the confidential section/s of the report/presentation.

Councillor Information Notes that contain Confidential Information must be clearly identified and watermarked as confidential.

Information presented at Councillor Briefing Sessions and contained within Information Notes not classified as 'Confidential' is considered Council information, as defined in the Codes of Conduct. Council Officials must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.

5 MANAGING CONFIDENTIAL INFORMATION

It is important to ensure that the release of any Council information occurs in accordance with established Council policies and procedures and in compliance with relevant legislation. Councillors and members of staff have an obligation to ensure that Confidential Information is managed appropriately. This means ensuring that:

- Confidential Information is appropriately watermarked, titled, protected, secured and stored (in accordance with Council's Records Management Policy)
- access to and usage of Confidential Information is limited to appropriate and legitimate Council purposes, not for non-official purposes or personal use or gain
- the release of Confidential Information may be authorised by the General Manager, Public Officer (in relation to access under the GIPA Act), legislative requirement, or Order of a Court, Tribunal or Commission. The classification of information as 'confidential' will be reviewed at any time access is sought to that information
- information discussed during a closed session of a Council meeting and associated documentation must not be disclosed to others not in attendance at the closed session [S664(1A) LG Act]
- no personal benefit is obtained, either directly or indirectly from access to any information obtained during the exercise of official functions or duties.

6 DISCLOSURE OF INFORMATION HELD BY COUNCIL

Disclosure of information held by Council must be undertaken in accordance with Council's *Public Access to Documents and Information Held by Council* policy.

7 USE OF CONFIDENTIAL INFORMATION HELD BY COUNCIL

Council information is to be held securely and used only for the purposes for which it was created or collected. Council's Codes of Conduct, under the section titled 'Use of Certain Council Information' states:

7.8 *In regard to information obtained in your capacity as a Council official, you must:*

- only access Council information needed for Council business*
- not use that Council information for private purposes*

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- (c) *not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with Council*
- (d) *only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.*

The improper use of Confidential Information can constitute corrupt conduct as defined by the *Independent Commission Against Corruption Act 1988*.

It is the responsibility of each Council official to comply with the provisions outlined in this policy. Failure to comply with the provisions set out in this policy will constitute a breach of the Council's Codes of Conduct.

8 REPORTING BREACHES

The Codes of Conduct and Internal Reporting policy contain provisions relating to the reporting of breaches of Council's policies and the Codes of Conduct.

9 SUMMARY OF OBLIGATIONS

Council officials are expected to carry out their duties in a manner that allows the public to be informed about Council's activities and practices. However, in preserving Confidential Information, Council officials:

- should exercise caution in the use of any information gained in the course of their employment or business with Council if disclosed may disadvantage or harm the reputation or interests of Council, or any other person
- are obliged to identify and recognise information that is confidential and act in such a manner which protects the confidential nature of the information in the best interests of Council
- must act with respect and integrity in maintaining Confidential Information
- should be aware that disclosure of Confidential Information, either orally, electronically, in written or any other form constitutes a breach of Council's Codes of Conduct and may result in disciplinary action or other sanctions.

10 RELATED LEGISLATION AND POLICY

This policy should be read and considered in accordance with provisions set out in:

- Local Government Act 1993
- Independent Commission Against Corruption Act 1988

And the following Council policies:

- Codes of Conduct
- Privacy Management Plan
- Internal Reporting
- Public Access to Documents and Information held by Council
- Access to Council Information and Staff by Councillors
- Information Security
- Corporate Records Management

11 FURTHER INFORMATION

Further information on practices relating to the management of Confidential Information can be found in:

- Section 2.5 of the NSW Ombudsman's *Good Conduct and Administrative Practice: Guidelines for State and Local Government*, 2006 (2nd edition) (www.ombo.nsw.gov.au)
- NSW Ombudsman's *Security of Information: Public Sector Agencies* Factsheet 19, 2010, 2012 (www.ombo.nsw.gov.au)
- Independent Commission Against Corruption website (www.icac.nsw.gov.au)
- Local Government Reform – Promoting Better Practice: Reviews (www.dlg.nsw.gov.au).

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COUNCIL POLICY

SUMMARY SHEET	
Responsible Division	Governance and Information
Date adopted by Council	[To be inserted by Corporate Governance]
Date of previous adoptions	Management policy adopted by EMC: 16 September 2014, 6 August 2013, 21 January 2008
Date of next review	May 2019
Legislative or other requirement for review	Every two years, as recommended by the ICAC for such policies introduced to manage corruption risks
Responsible Manager	Manager Governance and Information
Authorised by	Director Corporate and Community Services