

## HEAD OF POWER

- *Local Government Act 2009*, section 171(3)

## INTENT

The purpose of this policy is to assist Councillors to comply with section 171(3) of the *Local Government Act 2009* (the Act) and defines the types of information that are considered confidential.

## SCOPE

This policy applies to Councillors.

## DEFINITIONS

**Employee** means a local government employee as defined pursuant to the *Local Government Act 2009*.

## POLICY STATEMENT

1. In the course of undertaking their duties, Councillors will have access to or will be exposed to information. Some of this information will be confidential information.

A Councillor must not release information that the Councillor knows, or should reasonably know, is information that is confidential to Council<sup>1</sup>. A contravention of this is considered misconduct under the Act.

2. **Confidential Information**

A person who is, or has been, a Councillor is expected to understand that information acquired as a Councillor must not be used to gain a financial advantage for the person or someone else or cause detriment to Council.

The following is a non-exhaustive list of those types of information considered confidential:

- Commercial in confidence information including where the release of information would affect a third party's competitive advantage – this is particularly relevant in a competitive tender situation.
- Information derived from government departments or ministers that has been classified as confidential or using the terms protected, sensitive or official in line with the Queensland government information security classification framework.
- Information of a personal nature or about personal affairs, for example the personal details of Councillors or Council employees.

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<sup>1</sup> Section 171(3) of the *Local Government Act 2009*

- Information relating to property disposal or an acquisition process where release of the information may prejudice Council<sup>2</sup>.
- Financial and legal analysis where the disclosure of that information may compromise Council or someone else.
- Information that could result in action being taken against Council for defamation.
- Legal advice provided to Council, information about a legal issue/matter before the courts or legal proceedings that may be taken by or against Council.
- Information that is expressly given to Councillors in confidence.
- Information examined or discussed at Councillor briefing/consultation sessions unless the Chief Executive Officer declares that such information (or part thereof) is not confidential.
- Information about:
  - The appointment, discipline or dismissal of the Chief Executive Officer;
  - Industrial matters affecting employees;
  - Council's budget;
  - Rating concessions;
  - Matters that may directly affect the health and safety of an individual or group of individuals;
  - Negotiations relating to the taking of land by Council under the *Acquisition of Land Act 1967*;
  - A matter that Council is required to keep confidential under a law of, or formal arrangement with, the Commonwealth or a State.

### 3. Confidential Information at Council Meetings

During Council meetings, and other meetings of Council, Councillors will receive information which they know or ought to know is confidential. However, to assist the Councillor, the following applies:

- The Chief Executive Officer may make a declaration that information concerning a specific matter is to be treated as confidential to Council, and the information will remain confidential unless or until Council resolves to the contrary.
- An item on a Council meeting agenda and the information contained in the documentation or supporting material that is declared confidential by the Chief Executive Officer is to remain confidential unless or until Council resolves to the contrary.
- If the Mayor or a Councillor in a meeting asks that a matter be treated as confidential, Council will formally resolve as to whether all information concerning the matter is confidential.
- If Council resolves that an item and the information contained in the documentation or supporting material is to be confidential, it remains confidential unless or until Council resolves to the contrary.
- If Council exercises its powers to close a meeting to members of the public<sup>3</sup>, all information in relation to the matters discussed during the closed meeting or the closed portion of the meeting is confidential, unless and until Council resolves to the contrary.

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<sup>2</sup> Section 171(1) of the *Local Government Act 2009*

<sup>3</sup> Section 254J of the *Local Government Regulation 2012*

- Any information of a type deemed to be confidential is to be presumed by Councillors to be confidential to Council and must not be released without seeking advice from the Chief Executive Officer.
- If a Councillor has any doubt as to whether Council considers information to be confidential, the Councillor is to act on the assumption the information is confidential until the doubt is resolved at a subsequent meeting of Council.

## 4. Responsibilities of Councillors

Councillors must be aware of their responsibilities and agree they should:

- Exercise due care when handling or using information acquired in their role as a Councillor.
- Acknowledge there will be information that must be treated as confidential because to release it would reduce public trust and confidence in the integrity of the Council.
- Acknowledge that disclosure of confidential information constitutes a breach of the Act.
- If uncertain, presume information is confidential, and seek advice from the Chief Executive Officer prior to any release of it.
- Undertake not to disclose and to use their best endeavours to prevent disclosure of, confidential information to any person or organisation, specifically:
  - Not discussing confidential Council information with family, friends and business associates; and
  - Ensure documents containing confidential information are properly safeguarded at all times, including materials stored at private or business residences.

## 5. Release of Confidential Information

Any release of confidential information for any purpose to any person or organisation (other than those entitled to the information, such as other Councillors or employees) is a breach of section 171(3) of the Act.

Release includes:

- Orally telling any person about the information or any part of the information.
- Providing the original or a copy of documentation or any part of the documentation that is marked confidential.
- Paraphrasing (putting into your own words) any confidential information and providing that in writing or orally.

## 6. Breach of this Policy

A complaint about a breach of this policy may be made by any person to the Office of the Independent Assessor (OIA). A breach of section 171(3) is considered misconduct as defined by section 150L of the Act.

Details of how to lodge a complaint to the OIA can be found at [www.oia.qld.gov.au](http://www.oia.qld.gov.au).

## ASSOCIATED DOCUMENTS

- Code of Conduct for Councillors in Queensland
- *Local Government Regulation 2012*
- *Right to Information Act 2009*

## DOCUMENTS CONTROLS

Council will review this policy biennially or in response to changes in law or best practice.

## POLICY OWNER

Chief Legal Officer, Governance and Legal Services.