

CP35 Public Transparency Policy

Responsible Officer:	Chief Executive Officer
Document type:	Council Policy
Reference:	CP35
Approved by:	Council
Date approved:	28 August 2020
Date of next review:	August 2022

Policy Objective

The Council must adopt and maintain a public transparency policy under section 57 of the *Local Government Act 2020* (the Act). This policy gives effect to the *Public Transparency Principles* outlined in section 58 of the Act (see **Appendix 1**).

The objective of Council's Public Transparency Policy is to formalise its support for transparency in its decision-making processes and the public awareness of the availability of Council information. As a result, this policy seeks to promote:

- a. greater clarity in the Council's decision-making processes
- b. increased confidence and trust in the community through greater understanding and awareness
- c. enhanced involvement in the Council's decision-making process by the community
- d. improved Council performance
- e. access to information that is current, easily accessible and disseminated in a timely manner
- f. reassurance to the community that the Council is spending public monies wisely
- g. the protection of information that is identified as being sensitive or confidential under the Act and other legislation.

Policy Details

A transparency policy needs to cover both documentary information, process information and how information will be made available to the public and is an integral part of the Council's good governance framework.

1. Scope

This policy applies to Councillors and Council staff.

2. Roles

Party/parties	Roles and responsibilities
Council	Champion the commitment and principles for public transparency through leadership, modelling practice and decision-making.
Leadership Team	Champion behaviours that foster transparency and drive the principles through policy, process and leadership. Monitor implementation of this policy.
Leadership Team, Shared Leadership Team	Manage areas of responsibility to ensure public transparency, good governance and community engagement is consistent with this policy.
All Staff	Public transparency is the responsibility of all employees as appropriate to their role and function. All staff respond to requests for information and facilitate provision of information in consultation with their manager and in alignment with the Policy.
General Manager Corporate	Monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.

3. Definitions

For the purposes of this policy, the Council adopts the following definitions.

Community	Community is a flexible term used to define groups of connected people. It is used in this policy to describe people of a municipality generally, including individuals or groups who live, work, play, study, visit, invest in or pass through the municipality. More specifically, it can refer to everyone affiliated with the municipality, or smaller groups defined by interest, identity or location, and not necessarily homogenous in composition or views. Different types of communities often overlap and extend beyond municipal boundaries. Communities may be structured, as in clubs or associations or unstructured, such as teens. Communities are flexible and temporary, and subject to individual identity and location.
Confidential information	Defined in section 3 of the <i>Local Government Act 2020</i> .
Consultation	The process of seeking input on a matter.
Public interest	When considering public interest, the Council will apply the test that exists in the <i>Freedom of Information Act 1982</i> .
Public Participation	Encompasses a range of public involvement, from simply informing people about what government is doing, delegating decisions to the public and community activity addressing the common good.
Stakeholder	An individual or group with a strong interest in the decisions of Council and are directly impacted by their outcomes.

Closed Meetings	When the Council resolves to close the meeting to the general public, in order to consider a confidential matter according to the definition in Section 3 of the Act.
The Act	The <i>Local Government Act 2020</i>
Transparency	A lack of hidden agendas or conditions, and the availability of all information needed in order to collaborate, cooperate and make decisions effectively. Importantly, “transparency” is also human rights issue: the right to have the opportunity, without discrimination, to participate in public affairs (s.58 of The Act).

4. Where the Council will be transparent

Decision Making at Council Meetings

Decisions made at Council Meetings will:

- be undertaken in accordance with the Act and the Governance Rules.
- be conducted in an open and transparent forum, unless in accordance with the provisions in the Act and the Governance Rules.
- will be informed through community engagement, in accordance with the Community Engagement Principles of the Act and the Community Engagement Policy (to be developed prior to 1 March 2021).
- will be made fairly and on the merits, and where any person whose rights will be directly affected by a decision of the Council, that person will be entitled to communicate their views and have their interests considered.

Council Information

A list of available information is provided in the Part II Statement published in accordance the *Freedom of Information Act 1982*. Part II of the *Freedom of Information Act 1982* requires government agencies and local councils to publish a number of statements designed to assist members of the public in accessing the information it holds. This information includes, but is not limited to:

Documents such as:

- plans and reports adopted by the Council
- policies
- project and service plans
- grant application, tenders and tender evaluation material
- service agreements, contracts, leases and licenses
- Council leases, permits and notices of building and occupancy
- Relevant technical reports and / or research that informs decision making.

Process information such as:

- practice notes and operating procedures
- application processes for approvals, permits, grants, access to Council services
- decision making processes
- guidelines and manuals
- community engagement processes
- complaints handling processes.

Council records which will, at a minimum, be available on Council's website:

- Council meeting agendas
- Reporting to Council
- Minutes of Council meetings
- Reporting from Advisory Committees to Council through reporting to Council
- Audit and Risk Committee Performance Reporting
- Terms of reference or charters for Advisory Committees
- Registers of gifts, benefits and hospitality offered to Councillors or Council Staff
- Registers of travel undertaken by Councillors or Council Staff
- Registers of Conflicts of Interest disclosed by Councillors or Council Staff
- Submissions made by the Council
- Registers of donations and grants made by the Council;
- Registers of leases entered into by Council, as lessor and lessee;
- Register of Delegations;
- Register of Authorised officers;
- Register of Election campaign donations.
- Summary of Personal Interests
- Any other Registers or Records required by legislation or determined to be in the public interest.

Consistent with the Part II statement, the Council will make available the following records for inspection. Examples include, but are not limited to

- Summary of Personal Interests ('Register of interests' until 24 October 2020)
- Submissions received under section 223 of the Local Government Act 1989 until its repeal or received through a community engagement process undertaken by Council.

The Council publishes a range of newsletters, reports and handbooks for residents, businesses and visitors to council. You can download them from the website or call Council for a copy. Some of these publications are available at the Sir Edward 'Weary' Dunlop Learning Centre.

5. Access to information

Section 16 of the *Freedom of Information Act 1982* requires the Council to make the maximum amount of information promptly and inexpensively available to the public, where they can properly do so or are required by law to do so.

The Council will facilitate access to information for members of the community, including by providing access to documents and/or responding to requests for information, in line with its obligations under relevant legislation and this policy.

- Information will be made available on the Council website, at Council offices, or by request.
- Members of the public can make different kinds of information requests to the council (e.g. informal requests for documents and information or formal FOI requests).
- Consideration will be given to accessibility and cultural requirements.
- The Council will respond to requests for information in alignment with the Act including the Public Transparency Principles, and this policy.
- In accordance with Part II statement made under the *Freedom of Information Act 1982*.

Freedom of information (FOI) applications

The *Freedom of Information Act 1982* gives members of the public right of access to documents the Council holds.

Potential FOI applicants are encouraged to call before making an FOI application as the Council may be able to make the required documents available outside of the FOI process. Many documents may be readily available under different instruments of legislation such as the Register of Planning Permit Applications under the *Planning and Environment Act 1987* and the Register of Building Permits under the *Building Act 1993*.)

6. Information not available

Some Council information may not be made publicly available. This will only occur if the information is confidential information or if its release would be contrary to the public interest or not in compliance with the *Privacy and Data Protection Act 2014*.

“Confidential information” is defined in section 3 of the *Local Government Act 2020*. It includes the types of information listed in the following table.

Type	Description
Council business information	Information that would prejudice the Council's position in commercial negotiations if prematurely released.
Security information	Information that is likely to endanger the security of Council property or the safety of any person if released.

Type	Description
Land use planning information	Information that is likely to encourage speculation in land values if prematurely released.
Law enforcement information	Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.
Legal privileged information	Information to which legal professional privilege or client legal privilege applies.
Personal information	Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released.
Private commercial information	Information provided by a business, commercial or financial undertaking that relates to trade secrets or that would unreasonably expose the business, commercial or financial undertaking to disadvantage if released.
Confidential meeting information	Records of a Council and delegated committee meetings that are closed to the public to consider confidential information
Internal arbitration information	Confidential information relating internal arbitration about an alleged breach of the councillor code of conduct.
Councillor Conduct Panel confidential information	Confidential information relating to a Councillor Conduct Panel matter
Confidential information under the 1989 Act	Information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i>

The Council may decide, in the interests of transparency, to release information to the public even though it is confidential under the Act. However, this will not happen if release is contrary to law in breach of contractual requirements or if releasing the information is likely to cause harm to any person or is not in the public interest to do so.

Public interest test

The Council is not required to make publicly available information if the release would be contrary to the public interest, in accordance with the Local Government Act 2020. When considering public interest, the Council will apply the test that exists in the *Freedom of Information Act 1982*. The Council may refuse to release information if it is satisfied that the harm to the community likely to be created by releasing the information will exceed the public benefit in it being released.

When considering possible harm from releasing information, the Council will only concern itself with harm to the community or members of the community. Potential harm to the Council will only be a factor if it would also damage the community, such as where it involves a loss of public funds or prevents the council from performing its functions.

Information that might be withheld because it is contrary to the public interest may include:

- internal working documents that have not been approved or submitted to Council, especially where their release may mislead the public;
- directions to Council staff regarding negotiations in contractual or civil liability matters, where release may damage the Council's capacity to negotiate the best outcome for the community,
- correspondence with members of the community, where release may inappropriately expose a person's private dealings.

Closed Meetings

The Council will consider confidential information in parts of a Meeting closed to the public in accordance with the Act.

The Council will consider, when deliberating on a motion moved during a Meeting closed to the public, under what circumstances the content of the motion, or portions of the motion, may be made available to the public.

If the Council determines that the information is not to be made available to the public, the motion will explain why, with reference to the public interest test and specifically how it relates to the matter under discussion.

7. Human Rights Charter

This policy has been reviewed against and complies with section 13 of the *Charter of Human Rights and Responsibilities Act 2006*, as this Policy aligns with and provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with. It is also in line with section 18 which recognises a person's right to participate in the conduct of public affairs.

8. Non-compliance with this policy

If a member of the community wishes to question a decision about the release of information, this should be raised directly with the officer handling the matter in the first instance. If the person is still not satisfied and would like to contest the decision, it can be reported to the Governance Coordinator.

If not satisfied with the Council's response, the concerns can be raised directly with the Victorian Ombudsman's office on (03) 9613 6222 or via the website www.ombudsman.vic.gov.au.

9. Monitoring, evaluation and review

Council commits to monitoring processes, information sharing and decision making to understand the overall level of success in the Policy's implementation.

A periodic review of this policy will be undertaken to ensure any changes required to strengthen or update the policy are made in a timely manner.

10. Policies

The Council is committed to developing clear, relevant and accessible policies which ensure consistent and transparent decision-making. All policies will be made publicly available.

Approval authority for Council policies:

The Chief Executive Officer may approve policies relating to day-to-day Council operations in line with his or her delegated authority.

All policies relating to community activities, the conduct of Council meetings, or Council's investments and finances must be approved by resolution at a Council meeting.

11. Related policies and legislation

- Governance Rules 2020
- Public Transparency Principles (see Appendix 1)
- CP30 Community Engagement
- CP02 Information Privacy
- AP65 Records Management
- AP01 Policy Management Guidelines
- *Charter of Human Rights and Responsibilities Act 2006*
- *Freedom of Information Act 1982*
- *Local Government Act 2020*
- *Privacy and Data Protection Act 2014*
- *Equal Opportunity Act 2010.*

12. Other references

- Victorian Ombudsman report *Investigation into the Transparency of Local Government Decision Making in December 2016*

Appendix 1 - The Public Transparency Principles

The following are the public transparency principles as outlined in the *Local Government Act 2020*.

- a. Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;
- b. Council information must be publicly available unless-
 - i. the information is confidential by virtue of this Act or any other Act; or
 - ii. public availability of the information would be contrary to the public interest;
- c. Council information must be understandable and accessible to members of the municipal community;
- d. public awareness of the availability of Council information must be facilitated.