

CP 14 Councillor Confidentiality Policy

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Policy Objective

To ensure that all councillors of Benalla Rural City Council understand and comply with their legal and ethical obligations in handling confidential information, to protect Council's strategic, financial, and commercial interests, safeguard personal privacy, whilst maintaining the trust and confidence of the community.

The policy establishes clear principles and expectations for accessing, using, storing, and disclosing confidential information responsibly, in accordance with the *Local Government Act 2020*, the *Model Councillor Code of Conduct*, and other relevant legislation.

Policy Scope

The *Model Councillor Code of Conduct* requires that councillors diligently use Council processes to become informed about matters which are subject to Council decisions.

To assist councillors in fulfilling this obligation, they are provided with the information necessary to enable them to fully understand matters on which decisions are to be made. This includes information relating to decisions intended to be presented to Council meetings, meetings of delegated committees and to decisions to be made by an officer under delegation.

The public availability of information leading to Council decisions is to be facilitated in accordance with the public transparency principles in the *Local Government Act 2020*.

However, the confidentiality of this information is important in some circumstances, as the provision of information in confidence enables Council officers to provide frank and fearless advice to councillors and facilitates open and candid discussion. It is also necessary to comply with confidentiality provisions in law relating to confidential, personal or health information.

This policy provides a mechanism for the provision of information subject to confidentiality restrictions to councillors and places controls on the disclosure of that information in accordance with the *Local Government Act 2020*.

Public Transparency

The *Local Government Act 2020* contains nine overarching governance principles, which a Council must give effect to in the performance of its role. One of the principles is that “the transparency of Council decisions, actions and information is to be ensured”.

The requirement for transparency is core to the democratic system and is one way that Councils are held accountable to their communities. However, the transparency of Council information is not absolute, and may be subject to reasonable limitations in some circumstances.

The *Local Government Act 2020* provides that Council information be publicly available unless:

- The information is confidential
- Public availability of the information would be contrary to the public interest.

The *Privacy and Data Protection Act 2014* requires that Councils collect, hold, manage, use, disclose and transfer personal information in accordance with the Information Privacy Principles set out in that act.

The *Health Records Act 2001* provides that Councils must not do an act, or engage in a practice, that is an interference with the privacy of an individual.

Documents Where Public Availability Would Be Contrary To Public Interest

In order to support Council’s deliberative process, it is necessary to provide councillors with information which, if disclosed, would be contrary to the public interest. This includes, but is not limited to, documents which contain confidential information.

The *Model Councillor Code of Conduct* provides that a councillor “must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public’s trust and confidence in the integrity of local government, including by not making Council information publicly available where public availability of the information would be contrary to the public interest.”

Documents where public availability would be contrary to the public interest are classified as internal documents.

Internal documents are:

- Documents containing confidential information
- Documents containing exempt matter
- Documents provided to councillors in relation to Strategy meetings, including meeting agendas, officer briefing papers and their attachments, handouts and presentations
- Drafts of officer reports prepared for Council meetings or meetings of delegated committees

- Opinion or advice prepared by an officer, or consultation or deliberation that has taken place between officers and a councillor in relation to the deliberative processes of the Council, including in the form of emails, memos and other communications between Council officers and councillors
- Documents classified as an internal document by the Chief Executive Officer in accordance with the Classification of internal documents section of this policy.

Internal documents may not be disclosed by councillors unless the Council or the Chief Executive Officer has determined that they should be publicly available. Disclosure in any other circumstances constitutes a breach of this policy and the *Model Councillor Code of Conduct*.

Confidential Information

A councillor must not intentionally or recklessly disclose confidential information, unless the Council has determined that it should be publicly available (except in the circumstances set out at section 125 of the *Local Government Act 2020*). Confidential information is defined as:

- *Council business information*: information that would prejudice the Council's position in commercial negotiations if prematurely released.
- *security information*: information that if released is likely to endanger the security of Council property or the safety of any person.
- *land use planning information*: information that if prematurely released is likely to encourage speculation in land values.
- *law enforcement information*: information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person.
- *legal privileged information*: information to which legal professional privilege or client legal privilege applies.
- *personal information*: information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.
- *private commercial information*: information provided by a business, commercial or financial undertaking that relates to trade secrets; or if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.
- confidential meeting information: the records of meetings closed to the public under section 66(2)(a) of the *Local Government Act 2020*.
- internal arbitration information: information specified in section 145 of the *Local Government Act 2020*.
- Councillor Conduct Panel confidential information: being information specified in section 169 of the *Local Government Act 2020*.
- information prescribed by the regulations to be confidential information for the purposes of this definition.
- information that was confidential information for the purposes of section 77 of the *Local Government Act 1989*.

Confidential information may not be disclosed by councillors unless it is information that the Council has determined should be publicly available in accordance with section 125 of the *Local Government Act 2020* or where its disclosure is otherwise permitted or required by law. Disclosure in any other circumstances constitutes a breach of this policy and the *Local Government Act 2020*.

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 titled and watermarked when provided to councillors.
- 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 Chief Executive Officer, legislative requirement, or Order of a Court, Tribunal or Commission.
- 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.
- No personal benefit is obtained, either directly or indirectly

Confidential reports, agendas and minutes provided to councillors in hard copy will be:

- Printed on green paper.
- Watermarked 'confidential' or have the words 'Confidential – Councillor Use Only' on the document.
- Delivered to councillors in a sealed pouch.

Electronic agendas and minutes containing confidential information will not be provided via email. Electronic agendas and minutes containing confidential information will be available to councillors in their MS Teams group.

Council restricts the entry of information into public AI Tools that is:

- Marked 'Confidential', 'Official Sensitive', 'Protected Sensitive' or 'internal document'
- Confidential business reports and attachments issued to councilors in agendas and minutes.
- Not already public or not intended for public release.
- Restricted by the *Public Transparency Policy*.
- Information that is defined as 'confidential information' under s125 of the *Local Government Act 2020*.

Information classified as Official Sensitive, Protected Sensitive or Confidential must not be entered into public AI tools unless all such content is redacted.

Confidential Information at Advisory Committees, Project Working Groups, Delegated Committees and Council Meetings

As a minimum, the following may occur relating to matters addressed at Advisory Committees, Project Working Groups, Delegated Committees and Council Meetings:

- The CEO may make a declaration that information concerning a specific matter is to be treated as confidential and the information will remain confidential unless or until Council resolves to the contrary.
- An item on a meeting agenda, including the information contained in the documentation or supporting material, that is declared confidential by the CEO or Chair is to remain confidential until the Council or relevant Committee resolves to the contrary.
- If the Council exercises its powers to close a meeting to members of the public, all information in relation to the matters discussed during that closed meeting or the closed portion of the meeting is confidential, unless and until the Council resolves to the contrary.
- Confidential information will be clearly identified, where possible, as confidential.
- Any information of a type deemed to be confidential is presumed to be confidential to Council and must not be released without seeking advice from the CEO.

Assemblies of Councillors Briefing Session

Councillor briefing sessions:

- Are confidential.
- 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.

Classification Of Internal Documents

In addition to those internal documents listed, a document may be classified as an internal document by the Chief Executive Officer.

In determining whether a document should be classified as an internal document, the Chief Executive Officer must commence the assessment from the position of acknowledging the presumption in favour of documents remaining unclassified.

A document may be classified as an internal document only if:

- It contains matter in the nature of opinion, advice or recommendation prepared by an officer or member of the council, or consultation or deliberation that has taken place between officers, member of the council, or an officer and a member of the council, in the course of, or for the purpose of, the deliberative processes involved in the functions of the Council
- The public availability of the information would be contrary to the public interest.

In determining whether a document should be classified as an internal document, the Chief Executive Officer must identify any relevant public interest factors favouring disclosure and nondisclosure, balance the relevant factors favouring disclosure and nondisclosure; and decide whether disclosure of the information would, on balance, be contrary to the public interest.

In making a public interest assessment, the following considerations shall be regarded as irrelevant to the assessment and not be used to influence the outcome:

- Whether the information could cause embarrassment to, or a loss of confidence in, the Council
- The extent to which the document may be misinterpreted or misunderstood by the public.

Documents provided to councillors that have been classified as internal documents will be clearly identified by marking them with a watermark, footer or equivalent designation.

Review

This policy may be reviewed at any time by the Council to accommodate changes in legislation, regulations, policy gaps, new technology or systems, as well as remain consistent with industry best practice.

Related Policies

- *Model Councillor Code of Conduct*
- *Public Transparency Policy*

Related Legislation

- *Local Government Act 2020*
- *Victorian Charter of Human Rights and Responsibilities Act 2006*
- *Freedom of Information Act 1982*
- *Health Records Act 2001*
- *Local Government (Governance and Integrity) Regulations 2020*
- *Privacy and Data Protection Act 2014*