



Mildura Rural City Council

Councillor Confidentiality Policy

Policy – CP085

| Prepared | Reviewed | Approved | Date | Council Minute No. |
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| Manager Governance | Manager Governance | Council | 28 August 2025 | 2025/00104 |
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1. The purpose of this policy is

To protect Council information that is provided to Councillors to assist them in the performance of their role, being information that needs to be managed securely prior to a Council decision on the matter being made.

2. Policy statement

The Councillor Code of Conduct requires that Councillors diligently use Council processes to become informed about matters that 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 requiring Councillor decisions. This includes information relating to decisions intended to be presented to Council meetings, meetings of delegated committees and 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 Section 58 of 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 facilitate 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*.

3. Principles

3.1 Public transparency

Section 9 of the *Local Government Act* contains nine overarching governance principles, which 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* provides that Council information be publicly available unless:

- the information is confidential; or
- public availability of the information would be contrary to the public interest.

Part 3 of the *Privacy and Data Protection Act* requires that councils collect, hold, manage, use, disclose and transfer personal information in accordance with the Information Privacy Principles set out in that Act.

Section 21 of the *Health Records Act* provides that councils must not do an act, or engage in a practice, that is an interference with the privacy of an individual.

3.2 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*).

Confidential information is defined as:

- Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released
- security information, being information that if released is likely to endanger the security of Council property or the safety of any person
- land use planning information, being information that if prematurely released is likely to encourage speculation in land values
- law enforcement information, being information that 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, being information to which legal professional privilege or client legal privilege applies
- personal information, being information that if released would result in the unreasonable disclosure of information about any person or their personal affairs

- private commercial information, being 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 disadvantages
- confidential meeting information, being the records of meetings closed to the public under section 66(2)(a) of the *Local Government Act*
- internal arbitration information, being information specified in section 145 of the *Local Government Act*
- Councillor Conduct Panel confidential information, being information specified in section 169 of the *Local Government Act*
- information prescribed by the regulations to be confidential information for the purposes of this definition and 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(3) of the *Local Government Act* 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* (Victoria).

3.3 Documents where public availability would be contrary to the public interest

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 that contain confidential information.

The 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 Councillor briefings, including meeting agendas, officer briefing papers and their attachments, handouts and presentations
- working papers or 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 section 3.6 of this policy.

Internal documents (or part thereof) 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 Councillor Code of Conduct.

3.4 Personal information

Councillors may be provided with health information about individuals to inform them about matters that are to be subject to Council decisions.

Personal information is information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

A Councillor must not use or disclose personal information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection, unless certain conditions are met as set out in the Information Privacy Principle 2.1, including but not limited to:

- The secondary purpose is directly related to the primary purpose of collection and the individual would reasonably expect the Councillor to use or disclose the information for the secondary purpose.
- The individual has consented to the use or disclosure.
- The use or disclosure is required or authorised by or under law.

Personal information should not be disclosed by Councillors other than in accordance with this policy. Disclosure in any other circumstances constitutes a breach of this policy and the *Privacy and Data Protection Act 2014* (Victoria).

3.5 Sensitive information

Councillors must not collect sensitive information unless:

- the individual has consented to the collection of sensitive information; or
- the collection is otherwise allowed under Information Privacy Principle 10 of the Privacy and Data Protection Act.

Sensitive information means information about an individual's racial or ethnic origin, political opinions, membership of a political association, religious beliefs or affiliations, philosophical beliefs, membership of a professional or trade association, membership of a trade union, sexual preferences or criminal record.

Circumstances where collection of sensitive information is allowed includes:

- where the sensitive information is necessary for research or compilation or analysis of statistics relating to government-funded targeted welfare or educational services, or relates to an individual's race or ethnic origin for the purpose of providing government funded targeted welfare or educational services
- where there is no reasonably practicable alternative to collecting information for that purpose and it is impracticable to seek consent to collect sensitive information.

Sensitive information receives a higher level of protection and care due to the nature of the information. Councillors should be cautious of the way in which they deal with sensitive information, if at all. Sensitive information should not be collected or used by Councillors other than in accordance with this policy. Disclosure in any other circumstances constitutes a breach of this policy and the *Privacy and Data Protection Act 2014* (Victoria).

3.6 Health information

Councillors may be provided with health information about individuals to inform them about matters that are to be subject to Council decisions.

Health information is any of the following:

- information or an opinion about the physical, mental or psychological health (at any time) of an individual; or a disability (at any time) of an individual; or an individual's expressed wishes about the future provision of health services to him or her; or a health service provided, to an individual – that is also personal information
- other personal information collected to provide, or in providing, a health service
- other personal information about an individual collected in connection with the donation, or intended donation, by the individual of his or her body parts, organs or body substances
- other personal information that is genetic information about an individual in a form that is or could be predictive of the health (at any time) of the individual or of any of his or her descendants.

Health information does not include health information, or a class of health information or health information contained in a class of documents, that is prescribed as exempt health information for the purposes of the *Health Records Act 2001* generally or for the purposes of specified provisions of the *Health Records Act*.

A Councillor must not use or disclose health information about an individual for a purpose (the secondary purpose) other than the primary purpose of collection, unless one of the following apply:

- The secondary purpose is directly related to the primary purpose of collection and the individual would reasonably expect the Councillor to use or disclose the information for the secondary purpose.

- The individual has consented to the use or disclosure. The use or disclosure is required or authorised by or under law.

Health information must not be disclosed by Councillors other than in accordance with this policy. Disclosure in any other circumstances constitutes a breach of this policy and the *Health Records Act 2001* (Victoria).

3.7 Classification of internal documents

In addition to those documents listed at section 3.3, 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 or member 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.

4. Implementation

General Manager Corporate Performance
Manager Governance
Governance and Risk Coordinator
Governance Officer

5. Definitions

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| Confidential information | Has the same meaning as at section 3 of the <i>Local Government Act 2020</i> (Victoria) |
| Exempt matter | Has the same meaning as at section 5 of the <i>Freedom of Information Act 1982</i> (Victoria) |
| Health information | Has the same meaning as at section 3 of the <i>Health Records Act 2001</i> (Victoria) |
| <i>Health Records Act</i> | Means the <i>Health Records Act 2001</i> (Victoria) |
| Internal documents | Means those documents listed at section 6.4 of this policy and any documents so classified under the provisions of section 9 of this policy. |
| <i>Local Government Act</i> | Means the <i>Local Government Act 2020</i> (Victoria). Has the same meaning as at section 3 of the <i>Local Government Act 2020</i> (Victoria) |
| <i>Privacy and Data Protection Act</i> | Means the <i>Privacy and Data Protection Act 2014</i> (Victoria) |
| Personal information | Has the same meaning as at section 3 of the <i>Privacy and Data Protection Act 2014</i> (Victoria) |

6. Legislation and other references

6.1 Legislation

For further information related to this policy see:

- Victorian Local Governance Association (VLGA)
- *Local Government Act 2020* (Victoria)
- *Local Government (Governance and Integrity) Regulations 2020* (Victoria)
- *Freedom of Information Act 1982* (Victoria)
- *Health Records Act 2001* (Victoria)
- *Privacy and Data Protection Act 2014* (Victoria)

6.2 Documents

This policy is implemented in conjunction with the following documents:

- Privacy and Data Protection Policy CP017
- Public Transparency Policy CP067
- Councillor Code of Conduct

6.3 Risk assessment reference

| Risk Category | ✓ | Risk Category | ✓ |
|----------------------------------|---|-------------------------------------|---|
| Asset Management | | Financial Sustainability | |
| Committees | | Human Resource Management | |
| Compliance – Legal & Regulatory | ✓ | Leadership & Organisational Culture | ✓ |
| Contract Management | | Occupational Health & Safety | |
| Contract Tendering & Procurement | | Organisational Risk Management | ✓ |
| Corporate Governance | ✓ | Project Management | |
| Environmental Sustainability | | Public Image and Reputation | ✓ |