

Policy - Councillors' Access to Information and Their Interaction with Staff

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COUNCILLOR'S ACCESS TO INFORMATION AND THEIR INTERACTION WITH STAFF

1. Aims

This policy will:

- provide clear communication channels to ensure the speedy provision of accurate information to ensure Councillors are able to exercise the functions of their civic office;
- recognise the particular circumstances of the council;
- require adequate training of staff and councillors on the need for the policy and its requirements;
- provide appropriate sanctions for non-compliance; and
- be reviewed periodically to monitor its effectiveness and compliance

2. Objectives

The objectives of this policy are to:

- provide a documented process on how councillors can access council records and how Councillors and staff interact;
- ensure councillors have access to all documents necessary for them to exercise their statutory role as a member of the council;
- ensure Council complies with the spirit and intent of the GIPA Act, and applicable common law other than where public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure. The General Manager will act in accordance with the relevant law when providing information to councillors.
- ensure that councillors receive advice to help them in the performance of their civic duty in an orderly and regulated manner;
- provide direction on councillors' rights of access to council buildings;
- and provide a clear and consistent framework for the reporting of, and appropriate application of sanctions for, breaches of this policy.

3. Code of Conduct

Council's Code of Conduct, is important in determining standards of conduct for Councillors and staff and forms an important part of this document.

4. Statutory Provisions for Councillors and Staff

Chapters 9 and 11 of the Local Government Act set out the statutory roles and duties of councillors and the General Manager. The introduction to Chapter 9 states that *"each council is a statutory corporation. The councillors are the governing body of the corporation and they have the responsibility of directing and controlling the affairs of the council in accordance with this Act."*

The General Manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.

The full statutory provisions are contained in Appendix 1.

5. Interactions

Councillors

Councillors seeking information on policy issues and day to day matters, in the exercise of their statutory role as a member of the Council, should contact the General Manager, Director, or Manager responsible for the carriage of the matter, provision of the service or completion of the project.

In interacting with staff Councillors must:

- only seek information on sensitive or controversial policy matters from the General Manager, Directors or Managers
- restrict their dealings with staff (other than General Manager, Directors and Managers) to normal working hours
- avoid overbearing or threatening behaviour
- not use electronic mail to broadcast personal and political views to staff.

Councillors must not direct or pressure staff in the performance of their work in connection with the preparation of reports, recommendations or the making of decisions under delegated authority.

The ICAC/Department of Local Government publication *"Under Careful Consideration/Key Issues for Local Government"* provides a number of examples of inappropriate interactions. See Appendix 2.

Staff

Staff must ensure that Councillors receive advice to help them in the performance of their civic and statutory duties and must not withhold information from a Councillor if the information is available to other Councillors.

In interacting with Councillors staff other than the General Manager or a union representative must not approach Councillors directly on staffing, industrial or political issues. Staff should not enjoy rights beyond those enjoyed by the general public.

Staff providing advice to Councillors must record/document the interaction as they would if the advice was provided to a member of the community.

During meetings

The interaction between councillors and staff at council meetings and committee meetings is regulated by:

- s.360 of the Local Government Act;
- cl.21 of the Local Government (Meetings) Regulation;
- council's code of conduct and;
- council's code of meeting practice
- this policy

Appendix 3 details the provisions.

Outside of Meeting

- The General Manager is responsible to the council for performance and direction of all staff and day to day management of council. Therefore, it is appropriate that all requests for information and approaches to staff outside the forum of a council or committee meeting, be directed to the General Manager, Public Officer, Director, or person/classifications nominated by the General Manager.
- It is within the discretion of the General Manager to require councillors to make an appointment with a senior officer, to put a request in writing, or to put it on notice to the council to obtain detailed or otherwise time consuming information. The General Manager must indicate in writing, the reasons for refusing a request.

- For all but straightforward advice on administrative/technical matters, councillors should put their requests for information or advice in writing to be answered by the General Manager, Director, Public Officer or nominated staff member. These written requests then form part of council records and can be filed appropriately.
- A senior officer, or nominated staff member, has the discretion to refer any request for information to the General Manager. The senior officer or nominated staff member must indicate to the councillor the reasons for the referral.
- If a councillor is concerned about any refusal to provide information, he/she should firstly raise the matter with the General Manager (or the Mayor if it was the General Manager who refused to provide the advice). If the Councillor is still dissatisfied he/she should request the information by way of a Question on Notice to the council.
- Councillors must not attempt to direct staff as to the performance of their work. Staff must report all such attempts immediately to their director or the General Manager.
- Councillors must not request staff to undertake work for the councillor or any other person.
- A Councillor, member of staff or delegate must not take advantage of their official position to improperly influence other Councillors, members of staff or delegates in the performance of their public or professional duties for the purpose of securing private benefit for themselves or for some other person.

Correspondence

That Council embrace the principle of keeping Councillors and staff informed on current and potential issues through the exchange of information received in written, electronic and oral form.

- Information on items currently before Council and of an urgent nature be immediately brought to the attention of Councillors and staff.
- Items containing worthwhile information, advice from local members and local government issues not needing to be formally dealt with by Council, are to be placed in the Councillors Bulletin.
- Other items which are not deemed to be administrative or routine or can't be dealt with by staff under delegated authority shall be submitted to Council following investigation and preparation of a report.

6. Access to Council Offices

Councillors seeking information on policy issues and day to day matters, in the exercise of their statutory role as a member of the Council, should contact the General Manager, Director, or Manager responsible for the carriage of the matter, provision of the service or completion of the project. In the Environmental Services Division first contact should be made with a Manager or Director, who may nominate an officer to specifically deal with the matter.

7. Access to Council records by Councillors

Statutory Provisions

Section 18 of the Government Information (Public Access) Act provides that the Council must provide access to certain documents free of charge to all members of the public.

Council is required to comply with the spirit and intent of the GIPA Act, and applicable common law and the Model Code of Conduct, so as to provide open access to the council's documents, other than where public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure. For example, there may be occasions where the release of personal information or information identifying a person would be contrary to the Privacy and Personal Information Protection Act 1998. The General Manager will act in accordance with the relevant law when providing information to councillors.

Any request from a Councillor received under the GIPA Act will require Council to consider if the release of the information requested is in the public interest as specified in Section 14 of the GIPA Act. The factors that Council must consider to determine the public interest are:

- Impact on Law Enforcement and Safety
- Impact on Individual rights, judicial processes and natural justice
- Impact on Business interests of Council and other persons
- Release of information would breach another piece of legislation

Council's Code of Meeting Practice provides a procedure for Councillors to obtain access to Council documents if the Mayor or General Manager refuses the requested access.

Details of the Government Information (Public Access) Act and Code of Meeting Practice provisions are contained in Appendix 4.

Requesting access to Council records

- Access to a council file, record or other document can only be provided according to this policy to ensure that access is obtained in ways that are legal and appropriate. This policy does not limit or restrict statutory or common law rights of access.
- Councillors can request the General Manager, the Public Officer or a Director to provide access to a particular council record. When making a request for information, Councillors should draft the request carefully and should precisely detail the information, or the nature of the information, sought. It is expected that councillors will act reasonably in making a request for information.
- Requests received from Councillors will be responded to within 20 working days.
- Councillors who have a personal (as distinct from civic) interest in a document of council has the same rights of access as any other person.
- Councillors are entitled to access to all council files, records or other documents where that document is identified in Section 18 of the Government Information (Public Access) Act or to a matter currently before the council.
- The General Manager shall not unreasonably decide that a document is not relevant to the performance of the councillor's civic duty and deny access to a council document. The General Manager must state the reasons for the decision if access is refused.
- Where it is believed that significant resources will be required to respond to a request for information, the General Manager should advise the councillor and provide details of the estimates of time and/or costs that are likely to be incurred in providing the information. An indication should also be given of what other matters will not be able to be attended to as a result of compiling the requested information.
- Requests received from Councillors under the GIPA Act will be responded to within the timeframes specified in the Act, which is 20 working days for the majority of requests.
- Councillors can request access to other documents of the council either by a Notice of Motion to the council or a Government Information (Public Access) Act application.

8. Rights of Review

If a Councillor is concerned about any refusal to provide information, he/she should firstly raise the matter with the General Manager (or the Mayor if it was the General Manager who refused to provide the advice). If the councillor is still dissatisfied he/she should request the information by way of a Question on Notice to the council.

The NSW Ombudsman and the Division of Local Government have a complaint handling function that can be utilised by Councillors if difficulties arise in the review process.

If a Councillor submits an application under the GIPA Act they can seek a review of the determination made by Council. Options for review include Internal Review by Council's Public Officer, external review by the Office of the Information Commissioner or the Administrative Decisions Tribunal.

9. Administrative Issues

The General Manager, Public Officer or Directors; shall keep a record of all requests by Councillors for access to information (other than those listed in Section 18 of the Government Information (Public Access) Act or by a Notice of Motion at a council meeting).

10. Breaches of this Policy

1. Reporting

- All occasions of a Councillor or staff member not complying with this policy should be immediately reported to the General Manager.
- Where the report relates to the conduct of a Councillor, the General Manager shall immediately report the matter to the Mayor and to the next council meeting.
- Where the report relates to the conduct of staff, the General Manager shall deal with the matter according to the terms of employment of the staff member. Proven breaches should also be dealt with accordingly, that is, by counselling, disciplinary action or dismissal.
- Where a councillor believes that the General Manager has failed to comply with the policy, the councillor shall immediately report to the mayor who will report the matter to the council.
- Before a report to council by the General Manager (or the Mayor), the General Manager (or the Mayor) should undertake preliminary inquiries to establish the facts. The preliminary investigations may take any form the

mayor and General Manager considers appropriate, but must involve discussions with the staff member and Councillor involved. Natural justice principles need to be satisfied in dealing with an alleged breach.

The council, or a committee of all Councillors established for the purpose, must decide whether a matter reported to it under this policy, reveals a breach. The council may take any steps provided for in this policy that it considers reasonable in the circumstances.

2. Sanctions

Council, having resolved that a councillor has failed to comply with this policy, can, by resolution:

- require the councillor to apologise to the person concerned;
- request a formal apology;
- counsel the councillor;
- reprimand the councillor;
- resolve to make its decision on the matter public;
- pass a censure motion at a council meeting;
- make public disclosures of inappropriate conduct;
- refer the matter to an appropriate investigative body if the matter is serious; and or
- prosecute any breach of the law.

Sanctions for staff, depending on the severity, scale and importance of the breach, may include:

- counselling the staff member;
- instituting council disciplinary proceedings; or
- dismissal.

11. Additional Information

This policy should be read in conjunction with Council's Code of Conduct and the following appendices:

Statutory Provisions for Councillors and Staff	Attached
Inappropriate Interactions	Attached
Interaction between Councillors and Council Staff during Meetings	Attached
Access to Council Records by Councillors	Attached

Statutory Provisions for Councillors and Staff

Chapters 9 and 11 of the Local Government Act set out the statutory roles and duties of Councillors and the General Manager. The introduction to Chapter 9 states that *“each council is a statutory corporation. The councillors are the governing body of the corporation and they have the responsibility of directing and controlling the affairs of the council in accordance with this Act.”* Chapter 9 includes the following provisions.

1. The governing body (s.222)

The elected representatives, called “councillors”, comprise the governing body of the council.

2. The role of the governing body (s.223)

The role of the governing body is to direct and control the affairs of the council in accordance with this Act.

3. The role of the Mayor (s.226)

The role of the Mayor is:

- to exercise, in case of necessity, the policy-making functions of the governing body of the council between meetings of the council;
- to exercise such other functions of the council as the council determines;
- to preside at meetings of the council; and
- to carry out the civic and ceremonial functions of the mayoral office.

4. The role of a councillor as a member of the governing body (s.232(1))

- The role of a councillor is, as a member of the governing body of the council:
- to direct and control the affairs of the council in accordance with this Act (for example, input into preparation of council’s management plan, financial plan and organisational structure);
- to participate in the optimum allocation of the council’s resources for the benefit of the area (for example, providing input into deciding priorities for construction and maintenance work);
- to play a key role in the creation and review of the council’s policies and objectives and criteria relating to the exercise of the council’s regulatory functions, and
- to review the performance of the council and its delivery of services, and the management plans and revenue policies of the council.

5. The role of a councillor as an elected person (s.232(2))

The role of a councillor is, as an elected person:

- to represent the interests of the residents and ratepayers;
- to provide leadership and guidance to the community; and
- to facilitate communication between the community and the council.

6. The role of the General Manager (s.335(1))

The General Manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.

7. The functions of the General Manager (s.335(2))

The General Manager has the following particular functions:

- to manage the council on a day-to-day basis;
- to exercise such of the functions of the council as are delegated by the council to the General Manager;
- to appoint staff in accordance with an organisational structure and resources approved by the council;
- to direct and dismiss staff; and
- to implement the council's equal employment opportunity management plan.

INAPPROPRIATE INTERACTIONS

The ICAC/Department of Local Government publication "*Under Careful Consideration; Key Issues for Local Government*" provides a number of examples of inappropriate interactions. These may be in conflict with Council's policy.

- councillors approaching junior members of staff for information on sensitive or controversial matters;
- members of staff approaching councillors directly (rather than via their director, staff representative or union delegate) on staffing or political issues;
- councillors approaching staff outside the council building or outside hours of work to discuss council business;
- staff refusing to give information which is available to other councillors to a particular councillor because of the staff member's or councillor's political views;
- councillors who have a development application (DA) before council discussing the matter with junior staff in staff-only areas of the council;
- junior staff being asked to answer questions or provide documents to councillors who are overbearing or threatening;
- councillors directing or pressuring staff in the performance of their work, or recommendations they should make; and
- staff providing advice to councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.

**INTERACTION BETWEEN COUNCILLORS AND COUNCIL
STAFF DURING MEETINGS**

The interaction between councillors and staff at council meetings and committee meetings is regulated by:

- Section 360 of the Local Government Act
- Clause 249 of the Local Government (General) Regulation
- Council's Code of Conduct
- Council's Code of Meeting Practice

Section 360 of the Local Government Act enables the council to make regulations in regard to the conduct of meetings, adopt codes of meeting practice and states that meetings must be conducted in accordance with the code of meeting practice.

Code of Meeting Practice

Questions may be put to Councillors and Council employees

16. (1) A councillor:
 - (a) may, through the chairperson, put a question to another councillor; and
 - (b) may, through the chairperson and the General Manager, put a question to a Council employee.
- (2) However, a councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents.
- (3) Any such question shall be in writing and must be put directly, succinctly, and without argument.
- (4) The chairperson must not permit discussion on any reply or refusal to reply to a question put to a councillor or Council employee under this clause.
- (5) Nothing in this clause affects questions being asked, with the leave of the chairperson, relevant to any matter under discussion at a meeting.

Mode of address

27. Councillors shall at all times address other councillors by their official designation, as Mayor or Councillor, as the case may be; and with the exception of the chairperson, or any councillor prevented by physical infirmity, shall stand when speaking.

Access to Council Records by Councillors

1. Statutory provisions

Section 18 of the Government Information (Public Access) Act provides that the council must provide access to the current version of certain council documents free of charge to all members of the public. These documents are:

- the council's publication guide;
- information about the council contained in any document tabled in Parliament by or on behalf of the council, other than any document tabled by order of either House of Parliament,
- the council's policy documents;
- the council's disclosure log of access applications;
- the council's register of government contracts ;
- the council's record of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure; and
- such other government information as may be prescribed by the regulations as open access information.

Schedule 5 Government Information (Public Access Regulation) 2009 also stipulates that the following additional documents are to be provided as open access information by Councils:

Information about the Council:

Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:

- the model code prescribed under section 440 (1) of the LGA and the code of conduct adopted under section 440 (3) of the LGA,
- code of meeting practice,
- annual report,
- annual financial reports,
- auditor's report,
- management plan,
- EEO management plan,
- policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors,
- annual reports of bodies exercising functions delegated by the local authority,
- any codes referred to in the LGA.

Information contained in the following records (whenever created) is prescribed as open access information:

- returns of the interests of councillors, designated persons and delegates,
- agendas and business papers for any meeting of the local authority or any committee of the local authority (but not including business papers for matters considered when part of a meeting is closed to the public),
- minutes of any meeting of the local authority or any committee of the local authority, but restricted (in the case of any part of a meeting that is closed to the public) to the resolutions and recommendations of the meeting,
- Departmental representative reports presented at a meeting of the local authority in accordance with section 433 of the LGA.

Information contained in the current version of the following records is prescribed as open access information:

- land register,
- register of investments,
- register of delegations,
- register of graffiti removal work kept in accordance with section 13 of the *Graffiti Control Act 2008*,
- register of current declarations of disclosures of political donations kept in accordance with section 328A of the LGA,
- the register of voting on planning matters kept in accordance with section 375A of the LGA.

Plans and Policies

Information contained in the current version and the most recent previous version of the following records is prescribed as open access information:

- local policies adopted by the local authority concerning approvals and orders,
- plans of management for community land,
- environmental planning instruments, development control plans and contributions plans made under the *Environmental Planning and Assessment Act 1979* applying to land within the local authority's area.

Information about development applications

Information contained in the following records (whenever created) is prescribed as open access information:

- development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and any associated documents received in relation to a proposed development including the following:
 - home warranty insurance documents,

- construction certificates,
- occupation certificates,
- structural certification documents,
- town planner reports,
- submissions received on development applications – (amended when received outside the neighbour notification period, contain complaints, are received from individuals who are not listed as notified neighbours and therefore are not made aware that their submissions are public docs).
- heritage consultant reports,
- tree inspection consultant reports,
- acoustics consultant reports,
- land contamination consultant reports,
- records of decisions on development applications (including decisions made on appeal),
- a record that describes the general nature of the documents that the local authority decides are excluded from the operation of this clause by subclause (2).

This clause does not apply to so much of the information referred to in subclause (1) (a) as consists of:

- the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
- commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret.

Approvals, orders and other documents

Information contained in the following records (whenever created) is prescribed as open access information:

- applications for approvals under Part 1 of Chapter 7 of the LGA and any associated documents received in relation to such an application,
- applications for approvals under any other Act and any associated documents received in relation to such an application,
- records of approvals granted or refused, any variation from local policies with reasons for the variation, and decisions made on appeals concerning approvals,
- orders given under Part 2 of Chapter 7 of the LGA, and any reasons given under section 136 of the LGA,
- orders given under the authority of any other Act,
- records of building certificates under the *Environmental Planning and Assessment Act 1979*,
- plans of land proposed to be compulsorily acquired by the local authority,
- compulsory acquisition notices,

- leases and licences for use of public land classified as community land.

The Local Government (General) Regulation and Council's Code of Meeting Practice provides a procedure for councillors to obtain access to council documents, without limiting any common law right of access. Clause 61 of the Code of Meeting Practice provides:

- (1) The Mayor or General Manager may allow or refuse to allow any councillor to inspect any record of the council that the councillor requests to see.
- (2) If the Mayor or General Manager refuses to allow a councillor to inspect any such record, the councillor may, at a meeting of the council, move for the production of the document. However, the councillor must give notice of intention to move the motion.
- (3) If the council passes a motion for the production of a council record, the council must ensure that the record:
 - (a) is produced immediately and laid on the table for inspection by the councillors; and
 - (b) is made available for inspection by any councillor on reasonable notice to the General Manager during the council's ordinary office hours on any day that is within one month after the passing of the motion.