
Policy Title:	Handling of Confidential Information – Closed Meetings
Policy No:	220
Policy Subject:	Confidential Information – Closed Meetings
Directorate:	Executive Services
Department:	Executive Services
Responsible Officer:	Chief Executive Officer
Authorised by:	North Burnett Regional Council
Adopted Date:	Policy & Strategy Meeting – 06/12/2011
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Authorities:	<i>Local Government Act 2009</i>

INTRODUCTION:

The policy is to provide guidance to Councillors and senior staff in complying with Sections 171 and 200 of the *Local Government Act 2009* regarding the proper handling of confidential information.

OBJECTIVES:

The policy aims to assist Council in:-

- Determining what might be considered confidential information and how this information should be handled.
- Supporting Councillors in balancing the right and duty to inform the public and consult with constituents about Council business, with the interest Council has in preventing disclosure of confidential information.

PRINCIPLES:

1. It is accepted that Councillors will be in receipt of confidential information that may or may not be part of a formal Council meeting. It is Councillors responsibility to ensure that such information is treated confidentially, so as not to harm, prejudice or compromise the interests of Council or any individual or organisation, or enable any individual or organisation to gain a financial advantage.

PRINCIPLES (continued):

2. Council operates in an environment of public accountability in which it seeks to inform the public of issues under consideration and the nature of decisions made by Council. Therefore, information should ordinarily be released to the public unless there are compelling reasons which indicate that this is not in the public interest.
3. Council is conscious of the need to handle Council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government. Whilst endeavouring in the interest of public accountability to limit the number of matters which are considered in confidential sessions, Council acknowledges that it is appropriate to consider certain matters in closed meetings.
4. The status of confidentiality may be set out in each Council report or on the front page of each document which is categorised as confidential.
5. Prior to consideration of any confidential information, Council must resolve to close the meeting to members of the Public in accordance with the *Local Government Act 2009*.
6. Confidential information shall not be incorporated in an Agenda or Minutes of any Council Meetings except by reference unless in the Agenda or Minutes of a closed Meeting of the Council.
7. A Confidential Minute Book shall be maintained for any matters considered by Council.
8. Unless otherwise endorsed, information contained within all closed meetings of Council shall remain confidential indefinitely.

SCOPE:

This policy and its procedures apply to confidential information held by Council and Councillors. The policy will be made widely available to Councillors and staff to ensure there is a common understanding of roles and responsibilities.

Any release of confidential information for any purpose to any person or organisation (other than those who are entitled to the information, such as any Councillors or Council staff) is a breach of section 171 and 200 of the *Local Government Act 2009* and of the Codes of Conduct for Councillors and for Employees. Breaches of this policy carry a maximum penalty of 100 penalty units.

A person may make a complaint about a statutory breach by a Councillor of this provision by giving written notice of the complaint to the Chief Executive Officer. The Chief Executive Officer must refer a complaint about such a breach to the Crime and Misconduct Commission (CMC) because it raises a suspicion of official misconduct, unless the Chief Executive Officer has evidence that establishes beyond any doubt that the breach did not occur.

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 that 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 LGA and the Code of Conduct of Councillors, and that Council may take legal action for any damages caused.
- 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:
 - Avoid discussing confidential Council information with family, friends and business associates.
 - Ensure documents containing confidential information are properly safeguarded at all times – including materials stored at private or business residences.
- Not use confidential information (or any information acquired as a Councillor) to gain improper advantage for themselves or any other person or body.

Consideration of Confidential Information

The following types of information shall be deemed to be confidential to Council unless or until Council resolves to the contrary in a particular instance:

- Information examined or discussed at Councillor briefing sessions, unless the Chief Executive Officer declares that such information (or part thereof) is not confidential.
- An item on a Council or committee 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 or the committee resolves to the contrary.
- Any information of a type deemed to be confidential is to be presumed by Councillors to be confidential and must not release 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 that Council does so intend until the doubt is resolved at a subsequent meeting of Council.

Consideration of Confidential Material—Council Meetings

The following procedures will apply to the preparation of an agenda and material for consideration at meetings of the Council:

1. If it is considered by the Chief Executive Officer that the Council should consider a matter in a closed meeting, the Chief Executive Officer will clearly indicate such recommendation on the agenda;
2. The Chief Executive Officer will make a declaration that all information contained in the documentation and associated material is information confidential to the Council;
3. The Chief Executive Officer will ensure that the documentation and material is clearly marked as confidential; and
4. The reason for the recommendation will be set out in the material.

The following procedures will apply to a recommendation by the Chief Executive Officer that a matter be considered in a closed meeting:

1. Council will consider the recommendation in open session unless to do so would result in the public release of the information concerning the matter;
2. Council shall determine by resolution whether the matter is confidential or not for the purposes of declaring that a meeting should be a closed one;
3. Upon moving that an issue be dealt with in a closed meeting, the mover must clearly state the reason for the motion; and
4. Council will resolve that:
 - The matter is to be considered in a closed meeting, and all information relating to that matter is confidential to Council, or
 - The matter will be considered in open session.

Information considered at a closed meeting of Council shall remain confidential unless or until Council resolves otherwise.

DEFINITIONS

- **Information** includes letters, reports, documents, facsimiles, attachments, tapes, emails, electron media, and other forms of information including discussions during meetings.
- **Councillor briefing sessions** are non-decision making forums convened by Councillors, the Chief Executive Officer and, as directed by the Chief Executive Officer, other Council officers that create an opportunity for Councillors and officers to discuss matters of proposed policy or other strategic or community sensitive issues, as well as providing a forum for Councillors to be made aware of issues of significance to the organisation and/or to the community.
- **Commercial in confidence information** includes where the release of information would affect a company's competitive advantage; this is particularly relevant in a competitive tender situation.
- **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 this is marked confidential.
 - Paraphrasing (putting into your own words) any confidential information and providing that in writing or orally.
- **Confidential information** includes:-
 - Information derived from government departments or ministers that has been classified as confidential
 - Information of a personal nature or about personal affairs, for example the personal details of Councillors or Council staff
 - Information relating to a property disposal or acquisition process where release of the information may prejudice Council
 - Financial and legal analysis where the disclosure of that information may compromise Council or someone else
 - Information relating to clients of Council
 - Information not owned or controlled by Council
 - Information that could result in any action being taken against Council for defamation
 - Information involving legal advice to Council or a legal issue or a matter before the courts
 - Information that is expressly given to Councillors in confidence is confidential

- **Confidential information** includes (continued):-
 - Information about:
 - the appointment, dismissal or discipline of employees
 - industrial matters affecting employees
 - the local government's budget
 - rating concessions
 - Contracts proposed to be made by it
 - starting or defending legal proceedings involving it
 - any action to be taken by the local government under the *Integrated Planning Act 1997*, including deciding applications made to it under that Act.

Acknowledgments

This procedure is largely based on pages 11-15 (inclusive) of "Handling confidential information: Guidelines and policy for local governments", jointly published by the Crime and Misconduct Commission and the (former) Department of Local Government Sport and Recreation – accessed on 21 July 2010 at: -

<http://www.dip.qld.gov.au/resources/guideline/localgovernment/guidelines-procedure-confidential-nfo.pdf>

Note: Prepared by King and Company, Solicitors – August 2010 and endorsed by LGAQ Executive 30 August 2010