

COUNCIL POLICY



TITLE:	COUNCIL CONFIDENTIALITY POLICY
ID NUMBER:	CPO-CORPS-GE-015 (DocSetID:3241308)
DEPARTMENT:	CORPORATE
UNIT:	CORPORATE SERVICES
RESPONSIBLE OFFICER:	Director Corporate Services

ADOPTED DATE AND BY WHOM:	26 November 2024 by Council
EXPIRY DATE:	26 August 2028
REVIEW DATE:	26 May 2028 This policy will be reviewed every four years or as required by any legislative or council changes.

AVAILABILITY:	Organisation wide	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Public	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
	Internet	Yes <input type="checkbox"/>	No <input type="checkbox"/>
ADVISE AVAILABILITY:	Media Release Sou Wester (Responsible Officer to prepare article)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
		Yes <input type="checkbox"/>	No <input type="checkbox"/>

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1. References

Local Government Act 2020 (Vic)
Model Councillor Code of Conduct
Glenelg Shire Council Records Management Policy (DocSetID: 1933907)

2. Purpose

- 2.1 The purpose of this policy is to outline the classification of documents that should be managed securely as a matter of good governance or that are subject to the Confidential Information provisions of the *Local Government Act 2020* (the Act).
- 2.2 The policy includes the obligations of Councillors to not disclose information which has been classified in accordance with this policy.
- 2.3 The policy also describes circumstances where a Councillor is not entitled to access Confidential Information.

3. Scope

- 3.1 This policy applies to the elected Councillors of the Glenelg Shire Council.

4. Council Policy

- 4.1 Information is provided to Councillors to facilitate the performance of their roles as members of Council under section 28 of the Act. Limitations apply to the access and disclosure of such information and to documents in which it is contained.
- 4.2 Documents provided to Councillors, including draft reports, briefings, attachments and Councillor updates will include a classification if they are to be treated as “Council in Confidence”. Council in Confidence documents are not for public release as a matter of good governance.
- 4.3 Council in Confidence documents may include Confidential Information as defined by section 3(1) of the Act. If a Council in Confidence document includes Confidential Information, it should include a notice indicating that it includes Confidential Information.

It is an offence for a Councillor to intentionally or recklessly disclose information they know, or should reasonably know, is Confidential Information.

- 4.4 A Councillor is not entitled to access Confidential Information if:

- a) it is not required for the Councillor to perform their role as Councillor; or
- b) it is provided to facilitate a Council decision in which the Councillor has a conflict of interest.

5. Definitions

- 5.1 In this policy:
 - a) "**Confidential Information**" means information that is defined to be Confidential Information in Section 3(1) of the Act (see section 12 below).
 - b) "**Conflict of Interest**" has the meaning ascribed in Division 2 of Part 6 of the Act (see section 13 below).
- 5.2 A reference to "Document" in this policy includes any electronic version or copy of the document or part of the document.

6. Council in Confidence documents

- 6.1 The Chief Executive Officer (CEO) may designate a document to be "Council-in-Confidence".
- 6.2 A document may be designated "Council-in-Confidence" if:
 - a) it contains Confidential Information;
 - b) is a document that has been prepared for the purpose of advising or briefing Councillors on a sensitive matter and may be detrimental to the outcome if released publicly at this time;
 - c) it is an internal working document, and its disclosure may be detrimental to the outcome if released publicly at this time, or
 - d) the document contains information that is the property of another person or body and the Council is not authorised to release it.
- 6.3 If the CEO designates a document "Council-in-Confidence", the CEO:
 - a) must ensure the words "Council-in-Confidence" appear prominently on the document; and
 - b) may specify a date or event when the designation lapses.
- 6.4 Unless the CEO specifies a date when the CIC designation lapses, the designation remains in force indefinitely
- 6.5 The Council may, by resolution, alter a designation of "Council in Confidence" by the CEO.
- 6.6 A document must not be designated Council in Confidence in contravention of the public transparency principles in section 58 of the Act.

- 6.7 A Councillor must not intentionally or recklessly disclose a Council-in-Confidence document to a person who is not authorised by the CEO or the Council to access the document.
- 6.8 The contents of this Policy are not intended to limit a person's right to request information under the Freedom of Information (FOI) Act.

7 Confidential Information notice

- 7.1 If the CEO considers that a document being provided to Councillors contains Confidential Information under section 3(1) of the Act, the CEO must ensure that the document contains a prominent written notice that it includes Confidential Information. This is in addition to the designation of "Council in Confidence".
- 7.2 The CEO must not describe information as Confidential Information if it does not meet the definition in section 3(1) of the Act.
- 7.3 A Councillor must not:
 - a) disclose, or cause access to, Confidential Information or a document containing Confidential Information to any person not authorised to access the information; or
 - b) produce or cause the production of, an unauthorised copy of a document or any part of a document containing Confidential Information.

8 Action when a Councillor has a Conflict of Interest

- 8.1 Section 130 of the Act requires a Councillor to declare a Conflict of Interest and not participate in the decision-making process on a matter in which they have a conflict of interest. A Councillor with a Conflict of Interest is not entitled to receive Confidential Information that is provided to other Councillors for the purpose of determining that matter.
- 8.2 If a Councillor becomes aware that they may have a conflict of interest in a Confidential matter, the Councillor must notify the CEO as soon as practicable.
- 8.3 If the CEO becomes aware that a Councillor has a conflict of interest in a Confidential matter, the CEO must ensure that documents containing related Confidential Information are not provided to the Councillor.
- 8.4 Before withholding Confidential Information from a Councillor under this section, the CEO must notify the Councillor of the action being taken.
- 8.5 If a Councillor becomes aware that they have received Confidential Information in relation to a matter in which they have a conflict of interest, the Councillor must:

- a) avoid reading the document;
- b) return or delete all copies of the document in their possession (including electronic copies); and
- c) notify the CEO of their conflict of interest and the actions they have taken.

9 Other access to Confidential Information

- 9.1 Councillors are entitled to be provided with information needed to perform their role as Councillors, including information needed for making Council decisions. However, a Councillor is not entitled to access Confidential Information that is not necessary for the performance of their role.
- 9.2 The CEO must ensure that any request from a Councillor for access to Confidential Information is referred to the CEO. The CEO will determine whether access to the Confidential Information is necessary for the performance of the Councillor's role.
- 9.3 If the CEO refuses to give a Councillor access to Confidential Information under this section the Council may, by resolution, alter the CEO's decision.

10 Failure to comply with this policy

- 10.1 A Councillor who fails to comply with this Council policy is in breach of the Model Councillor Code of Conduct.
- 10.2 Under Section 125 of the Act, it is an offence for a Councillor to intentionally or recklessly disclose information that the Councillor knows, or should reasonably know, is Confidential Information. This applies to any document containing Confidential Information and to the information itself. A failure by the CEO to describe information as Confidential Information does not absolve a Councillor of this responsibility.

11 Council Staff

- 11.1 The obligations of Section 125 of the Act, regarding Confidential Information, also apply to Council staff. The CEO is responsible for ensuring that Staff contracts, position descriptions and the Staff Code of Conduct outline staff obligations in this regard.

12 Confidential Information definition

confidential information means the following information—

- a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;

- b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
- d) law enforcement information, being 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;
- e) legal privileged information¹, being information to which legal professional privilege or client legal privilege applies;
- f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- g) private commercial information, being information provided by a business, commercial or financial undertaking that—
 - i. relates to trade secrets; or
 - ii. if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- h) confidential meeting information, being the records of meetings closed to the public *to consider confidential information*;
- i) internal arbitration information, being *specified information provided to or produced by an arbiter*;
- j) Councillor Conduct Panel confidential information, being *specified information relating to an application for, hearing by or decision of a Councillor Conduct Panel*;
- k) information prescribed by the regulations to be confidential information for the purposes of this definition.

Note - This definition of “Confidential Information” is drawn from section 3(1) of *Local Government Act 2020*. Cross references to sections of the Act in the original text have been substituted by descriptive text (in italics).

13 Conflict of Interest definition

For the purpose of the Act, a *relevant person* means a person who is a—

- a) Councillor; or
- b) member of a delegated committee who is not a Councillor; or
- c) member of Council staff.

A *relevant person* has a **conflict of interest** if the relevant person has—

- a) a general conflict of interest within the meaning of section 127; or
- b) a material conflict of interest within the meaning of section 128.

¹ Legal privileged information protects from disclosure, the contents of all communications passing between a lawyer and their client which refer to the lawyer-client relationship and which are confidential in character; [Victorian Government Solicitors Office, Navigating Legal Privilege 2022](https://www.victorian.gov.au/solicitors-office/navigating-legal-privilege-2022)

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