

## COUNCIL POLICY



<b>TITLE:</b>	<b>PUBLIC TRANSPARENCY</b>
<b>ID NUMBER:</b>	CPO-CORP-GE-014 (DocSetID: 2714387)
<b>DEPARTMENT:</b>	Corporate Services
<b>UNIT:</b>	Corporate Services
<b>RESPONSIBLE OFFICER:</b>	Director Corporate Services

<b>ADOPTED DATE AND BY WHOM:</b>	25 August 2020 by Council
<b>EXPIRY DATE:</b>	25 August 2028
<b>REVIEW DATE:</b>	25 June 2028 <i>This policy will be reviewed every four years or as required by any legislative or council changes.</i>

<b>AVAILABILITY:</b>	Organisation wide      Yes <input checked="" type="checkbox"/> Public      Yes <input checked="" type="checkbox"/> Internet      Yes <input checked="" type="checkbox"/>
<b>ADVISE AVAILABILITY:</b>	Media Release

## 1. References

### Council's:

Governance Rules (DocSetID: 726760)

GSC Freedom of Information Part II Statement - (DocSetID: 1515679)

Community Engagement Policy (DocSetID: 2739692)

Council Expense Policy (DocSetID: 2714386)

Audit and Risk Committee Charter (DocSetID: 2714384)

Glenelg Shire Council, Records Management Policy OPO-CORPS-RECM-001 (DocSetID: 1933907)

### Legislation:

#### [Local Government Act 2020](#)

*This policy relates to the Local Government Act 2020 (the Act) and results directly from amendments incorporated when the Act received Royal Assent on 24 March 2020.*

#### [Local Government Act 1989](#)

#### [Freedom of Information Act 1982](#)

#### [Privacy and Data Protection Act 2014](#)

#### [Equal Opportunity Act 2010](#)

#### [Charter of Human Rights and Responsibilities Act 2006](#)

#### [Gender Equality Act 2020](#)

#### [Health Records Act 2001](#)

#### [Public Records Act 1973](#)

#### [Disability Discrimination Act 1992](#)

Principles Public Transparency - *Local Government Act 2020* (DocSetID: 2694830)

## 2. Purpose

This policy sets out how Council information is made publicly available.

It forms part of Council's commitment to good governance and the importance of open and accountable conduct. The policy describes how Council makes its information and decision-making processes publicly available in order to:

- increase community confidence through greater understanding and awareness
- better enable the community to participate in decision making
- promote accountability in decision making, service delivery and performance
- ensure compliance with the requirements of the *Local Government Act 2020*.

In particular this policy gives effect to the Public transparency Principles of the *Local Government Act 2020* by seeking to:

- recognise Council information as an asset for public access and use
- apply a presumption of openness except where any Confidentiality Policy applies
- facilitate public awareness of the availability of Council information
- adopt a proactive approach where beneficial to community engagement
- ensure that Council information is current, accessible and understandable
- allow access to information promptly and free of charge or at a low cost.

## 3. Scope

This policy applies to a Glenelg Shire Councillor, member of a Council committee, Council employee, volunteer or contractor.

## 4. Policy Statement

The Glenelg Shire shall be transparent in its decision making processes and provide access to Council information in accordance with this policy and relevant legislation.

In fulfilling this commitment, Council will ensure that information is publicly available in accordance with this policy, unless the information is within the scope of any Confidentiality obligations.

Council will endeavour to ensure that information is understandable and accessible to members of the municipal community and will facilitate the public awareness of the availability of Council information.

## 5. Information Available to the Public

Council delivers a range of services to residents, businesses and visitors to the municipality and our services and functions are documented. Council will publish information about Council services and administration activities on Council's website or will make this information available upon request promptly.

This information includes but is not limited to:

- Plans, strategies, reports, policies and documents required by the *Local Government Act 2020* or adopted by Council.
- Local Laws
- Council meeting agendas, minutes and meeting recordings
- Reporting from Committees required in accordance with the Governance Rules
- Details of Delegated Committees and Community Asset Committees
- Audit and Risk Committee Performance Reporting
- Terms of Reference or Charters for Council Committees
- Registers required by the *Local Government Act 2020* or any other legislation
- Summary of Personal Interests
- Grant applications
- Service agreements, leases and licences
- Council leases, permits and notices of building and occupancy
- Relevant technical reports and / or research that informs decision making
- Records associated with capital works, engineering and the road network
- Records of work associated with public events and cultural programs
- Records of maintenance of parks, gardens, public facilities, street features and amenities
- Newsletters, reports and handbooks
- Procedural Information such as practice notes and operating procedures, application processes for approvals, permits, grants, access to Council services, guidelines and manuals, community engagement processes and complaints handling processes.

Council will make available the following records for inspection. Examples include but are not limited to:

- Summary of Personal Interests
- Submissions received under section 223 of the *Local Government Act 1989* or received through a community engagement process undertaken by Council.

Consideration will be given to accessibility and cultural requirements when making documents and information publicly available.

## **6. Decision Making at Council Meetings**

Decision making at Council Meetings:

- Will be undertaken in accordance with the Act and the Governance Rules
- Will be conducted in an open and transparent forum, unless in accordance with the provisions in the Act and Governance Rule
- Will be informed through community engagement, in accordance with the Community Engagement Principles and the Community Engagement Policy
- Will be made fairly, and on the merits, and where any person whose rights will be directly affected by a decision of the Council, that person will be entitled to communicate their views and have their interests considered.

## **7. Understandable and Accessible**

Council information that is publicly available will be understandable and accessible and regularly reviewed and updated.

Consideration will be given to accessibility under the *Disability Discrimination Act 1992 [Cth]* and cultural requirements in accordance with the *Charter of Human Rights and Responsibilities Act 2006* and the *Gender Equality Act 2020*.

Council does this in many ways but not limited to:

- Facilitate the awareness of access to Council information through Council's website and through community engagement opportunities
- Facilitate information in various formats such as digital and hardcopy
- Commit to making online information accessible to everyone and more user-friendly in general, regardless of disability or technology, and following best practice principles and Web Content Accessibility Guidelines Standards. This includes, but not limited to:
  - Text to voice and image to voice translation function

- Council has an Interpreter Services Directory to provide the assistance of interpreters and/or translators
- Provide ongoing training to staff to improve communication and report writing, to assist with plain English
- Assist the community in accessing its publicly available information and informing the community of its right to make an application under the Freedom of Information Act 1982 for information which is not considered publicly available information.

## 8. Transparency Considerations and Limitations

Some Council information that informs decision making by Council may not be made publicly available.

This will only occur if the information is confidential information or its release would be contrary to the public interest or not in compliance with the following relevant legislation:

- *Privacy and Data Protection Act 2014*
- *Local Government Act 2020*
- *Freedom of Information Act 1982*
- *Health Records Act 2001*
- *Council's Privacy Policy*
- *Councils Confidentiality Policy*

## 9. Information Not Available to the Public

### Confidential Information

Council is not required to make available information that is confidential information. "Confidential Information" is defined in section 3 of the *Local Government Act 2020*. It includes types of information listed below:

Council business	Information that would prejudice the Council's position in commercial negotiations if prematurely released.
Security	Information that is likely to endanger the security of Council property or the safety of any person if released.
Land use planning	Information that is likely to encourage speculation in land values if prematurely released.

Law enforcement	Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.
Legal privileged	information to which the legal professional privilege or client legal privilege applies.
Personal information	information which would result in the unreasonable disclosure of information about any person or their personal affairs if released.
Private commercial	Information provided by a business, commercial or financial undertaking that relates to trade secrets or that would unreasonably expose the business, commercial or financial undertaking to disadvantage if released.
Confidential meeting	Records of a Council and delegated committee meetings that are closed to the public to consider confidential information.
Internal arbitration	Confidential information relating to internal arbitration about an alleged breach of the councillor code of conduct.
Councillor Conduct Panel	Confidential information relating to a Councillor Conduct Panel matter.
Confidential information under the 1989 Act	Information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989 [Vic]</i> remains confidential information under the <i>Local Government Act 2020</i> .

Council may decide, in the interests of transparency, to release information to the public even though it is confidential under the Act. However, this will not happen if release is contrary to law, in breach of contractual requirements or if releasing the information is likely to cause harm to any person or it's not in the public interest to do so.

### **Councillor In Confidence**

Information provided to Councillors to facilitate the performance of their roles as members of Council under section 28 of the *Local Government Act 2020*. Limitations apply to the access and disclosure of such information and to documents in which it is contained.

## 10. Public Interest Test

Council is not required to make publicly available information if the release would be contrary to public interest, in accordance with the *Local Government Act 2020*.

When considering public interest, Council will apply the test that exists in the *Freedom of Information Act 1982*.

This means Council may refuse to release non-confidential information if it is satisfied that the likely harm to the community from releasing the information would exceed the public benefit of it being released.

When considering possible harm for the releasing of information, the Council will only concern itself with harm to the community or members of the public. Potential harm to the Council will only be a factor if it also damages the community (eg where it involves a loss of public funds or prevents the Council from performing its function). Information that might be withheld because it is contrary to public interest may include:

- Internal working documents that have not been approved or submitted to Council, especially if release may mislead the public
- Direction to Council staff regarding negotiations in contractual or civil liability matters
- Correspondence with members of the public, where release may inappropriately expose a person's private dwelling.

## 11. Freedom of Information Act

While the Council is committed to public transparency, there may be occasions where a person wishes to obtain information not released by the Council. The *Freedom of Information Act 1982* (FOI Act) gives a person certain rights to access council documents.

The FOI Act supports Council to release information proactively and informally outside of the FOI Act where it is possible and lawful to do so, and to make the maximum amount of information available to the community promptly and inexpensively.

Section 7 of the FOI Act also requires the Council to publish a description of documents held by the Council as well as information to assist members of the public in accessing Council documents.

## 12. Disputes

If access to Council information is denied, the person making the request has the right to question the decision.

A review of the decision will be undertaken in accordance with the Council's complaint handling process.



The person making the request has the right to seek further review of Council's decision by the Victorian Ombudsman at [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

### **13. Records Management**

All Council records created and managed as a result of implementing this policy will be managed in accordance with the Council's Records Management Policy.

The Records Management Policy assigns responsibilities for records management to employees, supervisors, volunteers and other specific positions.

No Council records are to be destroyed without consideration of the requirements of the Act(s) that govern the functions relevant to this policy. Prior to destruction, advice must be sought from the Records Management Unit, with consideration to the requirements of the appropriate Retention and Disposal Authority (RDA).

### **14. Human Rights and Responsibilities Charter Compatibility Statement**

This policy has been reviewed against section 13 of the *Charter of Human Rights and Responsibilities Act 2006*. Importantly, transparency is a human right under the *Charter of Human Rights and Responsibilities Act 2006*, namely, "the right to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. Additionally, this policy also provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with.

It is considered that this policy does not impact negatively on any rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

### **15. Gender Impact Assessment**

Under section 7 of the *Gender Equality Act 2020* (duty to promote gender equality), a defined entity must - in developing policies and programs and in delivering services that are to be provided to the public, or have a direct and significant impact on the public:

- consider and promote gender equality
- take necessary and proportionate action towards achieving gender equality.

Under section 9 of the *Gender Equality Act 2020* a defined entity must undertake a gender impact assessment when developing or reviewing any policy of, or program or service provided by, the entity that has a direct and significant impact on the public.

In accordance with Section 7 and 9 of the *Gender Equality Act 2020*, a gender impact assessment has been undertaken and identified barriers have been addressed in Section 4.2.3 'Understandable and Accessible' of this Policy.

## 16. Roles and Responsibilities

Responsibility	Role / Position
Champion the commitment and Principles for public transparency through leadership and decision-making	Council
Champion behaviours that foster transparency and lead the implementation of this policy	Chief Executive Officer Directors
Adhere to public transparency principles, this policy and associated requirements as appropriate to role and function	Councillors Committee Members All employees
Respond to requests for information in line with this policy	All employees
Freedom of Information applications	Corporate Governance Coordinator
Monitor implementation and adherence to this policy	Executive Manager Governance

## 17. Breaches of the policy

Failure to comply with Council policy, supporting procedures or guidelines, will be subject to investigation which may lead to disciplinary action.

Disclosure of confidential information by a person who is, or has been, a Councillor, a member of a delegated committee or a Council employee, is an offence under section 125 of *Local Government Act 2020*.

Further, disclosure of confidential information by a person who, is or has been, a Councillor, a member of a delegated committee is a misuse of position which is an indictable offence under section 123 of *Local Government Act 2020*.

## 18. Victorian State Legislation Copyright Acknowledgement

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