

**MANAGEMENT OF CONFIDENTIAL INFORMATION**

**Intent** To protect sensitive or potentially prejudicial information (created within Council or received by Council) so as not to harm or compromise the interests of Council and assure the distribution of sensitive or potentially prejudicial information is managed in a way that provides, to the fullest extent possible, maximum protection of that information.

**Scope** This policy applies to Councillors and Council Officers as defined in this policy that have access to or have accessed and/or released confidential and sensitive information whilst engaged by Cairns Regional Council.

**PROVISIONS**

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. Council is conscious of the need to handle information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government and complies with the use of such information in accords with the *Local Government Act 2009* and *Local Government Regulations 2012*.

Council is committed to:

- Transparency and accountability in its decisions and operations including information released in accordance with the *Right to Information Act 2009 (RTI Act)*.
- Proper collection and handling of personal information and appropriate management of access to such information in accordance with the *Information Privacy Act 2009 (IP Act)*.
- Responsible capture, storage, management, delivery and preservation of information in a manner that will derive maximum benefit for Council and the community.
- Protecting information from misuse, theft, corruption and destruction by applying enterprise content management guidelines consistent with the value of the information resource and the privacy rights of individuals, companies and other organisations.
- Ensuring ethical behaviour by all who use Council's information resources.
- Ensuring a proactive approach to the responsible management of all information through appropriate education and training of Councillors and staff.

This policy does not override Council's statutory obligations in respect of the use of information, nor does it override Council's obligations under the *Local Government Act 2009*, *Information Privacy Act 2009* or any other legislation or subordinate legislation to disclose or publish information where this is required by law.

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**This policy is to remain in force until otherwise determined by Council.**

**General Manager Responsible for Review:**

**Human Resources & Organisational Change**

**ORIGINALLY ADOPTED: 30/05/2002**

**CURRENT ADOPTION: 25/11/2020**

**DUE FOR REVISION: 25/11/2024**

**REVOKED/SUPERSEDED:**



**Christine Posgate  
A/Chief Executive Officer**

## Confidential Information

Information is confidential information if:

- Commercial in confidence information — including where the release of information would affect a third party's competitive advantage; this is particularly relevant in a competitive tender situation.
- Information derived from government departments, Ministers or other that have been classified as confidential.
- Information of a personal nature or about personal affairs, for example the personal details of Councillors or Council Officers, names and/or address of complainants or witnesses
- 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 that could result in action being taken against Council for defamation.
- Information involving legal advice to Council or a legal issue or a matter before the courts, or anticipated to progress the courts.
- Information that is expressly given to Councillors or Council Officers in confidence.
- Information examined or discussed at Council workshops or briefing sessions, unless the Chief Executive Officer (CEO) or relevant General Manager declares that such information (or part thereof) is not confidential.
- Information about:
  - the appointment, dismissal or discipline of employees;
  - industrial matters affecting employees;
  - the Council's budget;
  - rating concessions;
  - contracts proposed to be made by Council;
  - starting or defending legal proceedings involving Council;
  - any action to be taken by the local government under the *Planning Act 2016*, including deciding applications made to it under that Act.

It is acknowledged that some of the above classes of information may need to be disclosed from time to time for legal proceedings or in accordance with the *RTI Act 2009* and the *IP Act 2009*.

## Reports presented at Council Meetings

An item on a Council meeting agenda and the information contained in the documentation or supporting material that is declared confidential by the CEO is to remain confidential unless or until Council resolves to the contrary. If the Mayor or a Councillor in a meeting asks that a matter be treated as confidential, Council will formally resolve as to whether all information concerning the matter is confidential. 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.

Council meetings, standing and advisory committee meetings may resolve that a meeting be closed to the public if its councillors consider it necessary. Under s275(2) and s275(3) of the LG Act 2009, a resolution that a meeting be closed must state the nature of the matters to be considered while the meeting is closed and before Council can make a resolution (other than a procedural resolution) in relation to a closed session item, it must first resolve to open the meeting again to the public.

Whilst the resolution arising from such matters must be considered in an open session, Council has the option to make any reports or material prepared about a closed session matter only available under the provisions of the *RTI Act 2009* and the *IP Act 2009* or legal proceedings.

## Responsibilities of Councillors and Council Officers

Councillors and Council Officers must make themselves aware of the types of information Council deems to be confidential and the personal responsibilities they have to ensuring there is no disclosure of this information:

- Exercise due care when handling or using information acquired in their role with Council;
- 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 *Local Government Act 2009* and this policy, and that an individual could face personal liability for damages caused to third parties;
- If uncertain, presume information is confidential, seek advice and/ or formally request access from the relevant Council Officer or the CEO 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; and
  - ensure documents containing confidential information are properly safeguarded at all times – including materials stored at private or business residences.
- Not use confidential information to gain improper advantage for themselves or any other person or body; and
- Not use confidential information to cause harm or detriment to Council or any other person or body.

### **Use of Information by Council Officers**

It is important to ensure that the release of any Council Information occurs in accordance with established Council policies and procedures and in compliance with relevant legislation. Councillors and members of staff have an obligation to ensure that Confidential Information is managed appropriately.

Section 200 of the *Local Government Act 2009* states:

A person who is, or has been, a local government employee must not use information acquired as a local government employee to—

- (a) gain (directly or indirectly) an advantage for the person or someone else; or
- (b) cause detriment to the local government.

*Maximum penalty — 100 penalty units or 2 years imprisonment.*

A person who is, or has been, a local government employee must not release information that the person knows, or should reasonably know, is information that—

- (a) is confidential to the local government; and
- (b) the local government wishes to keep confidential.

*Maximum penalty — 100 penalty units or 2 years imprisonment.*

This means that:

- Access to and usage of Confidential Information is limited to appropriate and legitimate Council purposes, not for non-official purposes or personal use or gain.
- Information discussed during a closed session of a Council meeting and associated documentation must not be disclosed to others not in attendance at the closed session.
- No personal benefit is obtained, either directly or indirectly from access to any information obtained during the course of official functions or duties.

### **Access and release of information**

Any release of confidential information for any purpose to any person or organisation (other than those who are entitled to the information, such as other Council Officers) is a breach of s200 of the *Local Government Act 2009*. Release of information can include:

- 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 that is marked confidential; or
- Paraphrasing any confidential information and providing that in writing or orally.

When an external party is requesting access to Council records, a Councillor and/or Council Officer is to assume that all information produced, managed by or given to the Council is assumed to be confidential. Access can only be provided to external parties under the relevant legislative, local law, policy and administrative access. In addition, where there is a dispute and/or confusion about access, an external party has a legal right to apply under the *Right to Information Act 2009* or *Information Privacy Act 2009* to access information and each application would be assessed on its merits.