



Councillor Confidentiality Policy

1. PURPOSE

This Policy provides guidance to Councillors in complying with Section 171(3) of the *Local Government Act 2009* (LGA) regarding the proper handling of confidential information. The Policy aims to assist Council in determining what might be considered confidential information and how this information should be handled.

2. SCOPE & AUTHORITY

This Policy applies to confidential information held by Council and Councillors.

Section 171(3) of the *Local Government Act 2009* sets out provisions relating to the release of confidential information by Councillors. It States:

“A Councillor must not release information that the Councillor knows, or should reasonably know, is information that is confidential to the local government.”

3. POLICY STATEMENT

- 3.1 Councillors must use Council information in a way that promotes and maintains the public's trust and confidence in the integrity of Council.
- 3.2 This Policy aims to support Councillors in balancing the right and duty to inform the public and consult with constituents about Council business and the interest Council has in preventing disclosure of confidential information.
- 3.3 This Policy does not override an individual Councillor's statutory obligations in respect of the use of information, nor does it override Council's obligations under the *Local Government Act 2009* or any other legislation or subordinate legislation to disclose or publish information where this is requirement by law.
- 3.4 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.

At the same time, 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 Council.

- 3.5 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 Council's 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.
- 3.6 Whilst endeavouring in the interests of public accountability to limit the number of matters which are considered in closed meetings, Council acknowledges that it is appropriate to consider certain matters in confidence.

4. RESPONSIBILITIES

Councillors must be aware of their responsibilities and agree that they should:

- 4.1 Exercise due care when handling or using information acquired in their role as a Councillor.
- 4.2 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.
- 4.3 Acknowledge that disclosure of confidential information constitutes a breach of the *Local Government Act 2009*.



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- 4.4 If uncertain, presume information is confidential and seek advice from the CEO prior to any release of it.
- 4.5 Undertake to not disclose, and to use their best endeavours to prevent disclosure of confidential information to any person or organisation specifically:
 - 4.5.1 Avoid discussing confidential Council information with family, friends, and business associates.
 - 4.5.2 Ensure documents containing confidential information are properly always safeguarded – including materials stored at private or business residences.
- 4.6 Not use confidential information to gain improper advantage for themselves or any other person or body.
- 4.7 Not use confidential information to cause harm or detriment to Council or any other person or body.

The **CEO** is responsible for communicating this policy with Councillors and employees and ensuring that all confidential information is classified/labelled accordingly and secured appropriately.

All **employees** are responsible for properly classifying documentation presented to Council, to secure confidential information and to comply with the Employee Code of Conduct and S200 of the *Local Government Act 2009*.

5. CONFIDENTIAL INFORMATION

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

- 5.1 **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.
- 5.2 Information obtained from **government** departments or Ministers that has been classified as confidential.
- 5.3 Information of a **personal** nature or about personal affairs, for example the personal details of citizens, Councillors or Council staff.
- 5.4 Information relating to a **property disposal or acquisition** process where release of the information may prejudice Council (see also Section 171 (1) and Section 171A of the *Local Government Act 2009*).
- 5.5 Financial and legal analysis where the disclosure of that information may compromise Council or someone else or waive **legal professional privilege**.
- 5.6 Information that could result in action being taken against Council for **defamation**.
- 5.7 Information involving the provision of legal advice to Council or about a legal issue or a matter before a **court, commission or tribunal**.
- 5.8 Information that is expressly given to Councillors **in confidence**.
- 5.9 Information that is given to Council or a Council employee in circumstances where the giver of the information **imposes an obligation** of confidence on Council or the employee.
- 5.10 Information subject to a **contractual obligation** requiring Council to maintain confidentiality over the information.
- 5.11 Information subject to an obligation in the **Crime & Corruption Act 2001** to maintain confidentiality over the information.
- 5.12 Information subject to an obligation in the **Public Interest Disclosure Act 2010** to maintain confidentiality over the information.
- 5.13 Information examined or discussed at **Council Briefing Sessions/Workshops** unless the Chief Executive Officer declares that such information (or part thereof) is not confidential.



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5.14 **Information classified** (labelled) as confidential.

5.15 Information considered in a **closed meeting** under S254J of the Local Government Regulations 2012:

- (a) the appointment, discipline or dismissal of the chief executive officer;
- (b) industrial matters affecting employees;
- (c) the local government's budget;
- (d) rating concessions;
- (e) legal advice obtained by the local government or legal proceedings involving the local government including, for example, legal proceedings that may be taken by or against the local government;
- (f) matters that may directly affect the health and safety of an individual or a group of individuals;
- (g) negotiations relating to a commercial matter involving the local government for which a public discussion would be likely to prejudice the interests of the local government;
- (h) negotiations relating to the taking of land by the local government under the Acquisition of Land Act 1967;
- (i) a matter the local government is required to keep confidential under a law of, or formal arrangement with, the Commonwealth or a State;
- (j) an investigation report given to the local government under chapter 5A, part 3, division 5 of the Act. It is acknowledged that some of the above classes of information may need to be disclosed from time to time for legal proceedings, pursuant to a legislative requirement, or in accordance with the *Right to Information Act 2009*

6. RELEASE OF CONFIDENTIAL 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 Councillors or Council staff) is a breach of Section 171(3) of the *Local Government Act 2009*. 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 that is marked confidential in hard copy or electronically.
- Paraphrasing – putting into your own words – any confidential information and providing that in writing or orally.

7. BREACH OF THIS POLICY

For any breach, refer to the Investigations Policy (Statutory) Councillor Conduct Breach.

*Note - A contravention of S171(3) is misconduct that could result in disciplinary action being taken against a Councillor. See sections 150L(1)(c)(iii), 150AQ and 150AR.

8. RISK

This Policy aims to mitigate the risk and prevent unauthorised disclosure of information to ensure the public's trust and confidence in the integrity of the local government is not compromised as stated in the *Local Government Act 2009*.

11. RELATED LAWS

- Section 171(3) Local Government Act 2009 – Use of Information by Councillors
- Section 200 Local Government Act 2009 – Use of information by local government employees and Councillor Advisors
- Local Government Regulation 2012
- Sustainable Planning Act 2009
- Planning Act 2016



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- Right to Information Act 2009
- Crime & Corruption Act 2001
- Public Interest Disclosure Act 2010
- Information Privacy Act 2009
- Right to Information Act 2009
- Human Rights Act 2019

11. RELATED DOCUMENTS

- Code of Meeting Practice
- Code of Conduct for Councillors in Queensland
- Investigation Policy (Statutory) Councillor Conduct Breach
- Councillor Complaints Investigations Policy

12. REVISION HISTORY

- **Revokes:** Nil
- **Previous approved versions:** Nil
- **Suggested to review by:** Four (4) years

13. DEFINITIONS

- **Councillor Briefing Sessions/Workshops** - Councillor Briefing Sessions/Workshops are non-decision-making forums convened by Councillors, the CEO and, as directed by the CEO, other Council officers that create an opportunity for Councillors and officers to discuss matters of proposed policy or other strategic or community service 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
- **Information** - Comes in any number of forms including but limited to letters, report-documents, facsimiles, attachments, tapes, emails, electronic media, and/or other forms of information including discussions during closed meetings.
- **CEO** - means the Chief Executive Officer of the Balonne Shire Council appointed in accordance with under Section 194 of the *Local Government Act (Qld) 2009*. This includes a person acting in this position.
- **Councillor's** – means the currently elected Mayor and Councillors of Balonne Shire Council.
- **LGA** - *Local Government Act 2009*.
- **Council** – means Balonne Shire Council, its elected Councillors, its management, and employees.
- **Misconduct** – See Section 150L of the *Local Government Act 2009*

14. ATTACHMENTS

Confidentiality Policy Acknowledgment



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Confidentiality Policy Acknowledgment

I, Councillor _____, have read the above and understand my obligations in relation to access to and use of Council information and resources, and that if in doubt, I shall seek clarification from the Balonne Shire Council, Chief Executive Officer.

I understand and agree that I shall not disclose any Council information obtained in connection with my duties as an elected Councillor unless:

- Such disclosure is authorised or required by law, pursuant to a specific provision of relevant legislation (such as *the Right to Information Act 2009*); or
- Upon instructions from the Balonne Shire Council, Chief Executive Officer
- By resolution of Council that the information may be released to the general public; or
- Pursuant to any policy or procedure adopted by Balonne Shire Council

I understand that failure to comply with Section 171(3) Local Government Act 2009 will be a suspected conduct breach under *the Local Government Regulations 2012* and will be investigated in accordance with the Councillor Complaints Investigations Policy and maybe referred to the Office of Independent Assessor and/or the Crime & Corruption Commission.

Councillor Signature: _____

Date: _____

Witness Signature: _____

Date: _____