

POLICY:	STAFF – PROVISION OF INFORMATION TO AND INTERACTION BETWEEN COUNCILLORS AND STAFF
DATE ADOPTED:	Director Corporate Services & Finance’s Report #9.3.5 Council 20 October 2021 Resolution No ORD2021-371 Council 17 November 2021 Resolution No ORD2021-388 Director Corporate Services & Finance’s Report #1 Policy 5 December 2012 Council 6 February 2013 Minute Book No. 11477
ORIGINAL ADOPTION:	Director Corporate Services Report #1 Policy 1 December 2004, Council 8 December 2004 Minute Book No. 9416 (former Evans Policy)
FILE REFERENCE:	11.00015
OBJECTIVE:	To set guidelines for interaction between Councillors and Staff.

1. AIMS

This policy will:

- provide clear communication channels to ensure the speedy provision of accurate information.
- recognise the particular circumstances of the council.
- require adequate training of staff and councillors on the need for the policy and its requirements.
- provide appropriate sanctions for non-compliance; and
- be reviewed periodically to monitor its effectiveness and compliance.

2. OBJECTIVES

The objectives of this policy are to:

- provide a documented process on how councillors can access council records.
- ensure councillors have access to all documents necessary for them to exercise their statutory role as a member of the governing body of the council.

- ensure that councillors receive advice to help them in the performance of their civic duty in an orderly and regulated manner.
- provide direction on councillors' rights of access to council buildings; and
- provide a clear and consistent framework for the reporting of and appropriate application of sanctions for breaches of this policy.

3. INAPPROPRIATE INTERACTIONS

Council's policy is that the following interactions are inappropriate:

- councillors approaching junior members of staff for information on sensitive or controversial matters.
- members of staff approaching councillors directly (rather than via their director, staff representative or union delegate) on staffing or political issues.
- staff refusing to give information, which is available to other councillors, to a particular councillor because of the staff member's or councillor's political views.
- councillors who have a development application (DA) before Council discussing the matter with junior staff in staff-only areas of the council.
- junior staff being asked to answer questions or provide documents to councillors who are overbearing or threatening.
- councillors directing or pressuring staff on recommendations they should make or in the performance of their work; and
- staff providing advice to councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.

4. STATUTORY PROVISIONS FOR COUNCILLORS AND STAFF

Chapter 9 How are Councils established? and Chapter 11 How are Councils staffed? of the Local Government Act set out the statutory roles and duties of councillors and the General Manager.

Chapter 9 includes the following provisions.

1. The governing body (s.222)

The elected representatives, called "councillors," comprise the governing body of the council.

2. The role of the governing body (s.223)

The role of the governing body is to direct and control the affairs of the council in accordance with this Act.

3. The role of the Mayor (s.226)

The role of the Mayor includes:

- *to be the leader of the council and a leader in the local community.*
- *to preside at meetings of the council.*
- *to carry out the civic and ceremonial functions of the mayoral office; and*
- *to promote the effective and consistent implementation of the strategic plans, programs and policies of the council.*

4. The role of a councillor (s.232)

The role of a councillor includes:

- *to be an active and contributing member of the governing body.*
- *to participate in the development of the integrated planning and reporting framework.*
- *to uphold and represent accurately the policies and decisions of the governing body; and*
- *to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.*

5. The functions of the General Manager (s.335)

The General Manager has the following functions:

- *to conduct the day-to day management of the council in accordance with the strategic plans, programs, strategies and policies of the council.*
- *to implement, without undue delay, lawful decisions of the council.*
- *to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council.*
- *to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions; and*
- *to exercise any of the functions of the council that are delegated by the council to the general manager.*

5 ACCESS TO COUNCIL RECORDS BY COUNCILLORS

1. Statutory provisions

Section 6(1) of the Government Information (Public Access) Act 2009 (GIPA Act) provides that the council must make government information that is open access information publicly available. Section 18 of the GIPA Act describes open access information:

s.18 What constitutes open access information

The following government information held by an agency is the agency's **open access information** that is required to be made publicly available by the agency under section 6 (Mandatory proactive release of certain government information):

- (a) the agency's current publication guide (see Division 2).
- (b) information about the agency contained in any document tabled in Parliament by or on behalf of the agency, other than any document tabled by order of either House of Parliament.
- (c) the agency's policy documents (see Division 3).
- (d) the agency's disclosure log of access applications (see Division 4).
- (e) the agency's register of government contracts (see Division 5).
- (f) the agency's record (kept under section 6) of the open access information (if any) that it does not make publicly available on the basis of an overriding public interest against disclosure; and
- (g) such other government information as may be prescribed by the regulations as open access information.

Open Access information includes but not be limited to the following council documents:

- council's code of conduct
- council's code of meeting practice
- annual report
- annual financial reports
- auditor's report
- management plan
- EEO management plan
- the council's land register
- policy concerning the payment of expenses incurred by, and the provision of facilities to, councillors
- register of investments
- returns of the interests of councillors, designated persons and delegates
- returns as to candidates' campaign donations
- business papers for council and committee meetings (but not including business papers for matters considered when a meeting is closed to the public)
- minutes of council and committee meetings, but restricted (in the case of any meeting or part of a meeting that is closed to the public) to minutes of:
 - a) the recommendations of the meeting, other than recommendations concerning the proposed acquisition of land at a public auction; and
 - b) such other matters as the council or committee resolves should be made public
- register of delegations
- annual reports of bodies exercising delegated council functions
- local policies adopted by the council concerning approvals and orders
- records of approvals granted and decisions made on appeals concerning approvals
- records of building certificates

- development applications (within the meaning of the Environmental Planning and Assessment Act 1979) and any associated documents excluding commercial information, if the information would be likely to prejudice the commercial position of the person who supplied it or to reveal a trade secret
- plans of land proposed to be compulsorily acquired by the council
- leases and licences for use of public land classified as community land
- plans of management for community land
- environmental planning instruments, development control plans and plans made under s.94AB of the Environmental Planning and Assessment Act 1979 applying to land within the council's area
- departmental representatives' reports presented at a meeting of the council according to Section 433.

2. Code of Conduct

Part 8 of Council's Adopted Code of Conduct provides the following in relation to access to information

8 ACCESS TO INFORMATION AND COUNCIL RESOURCES

Councillor and administrator access to information

- 8.1 *The general manager is responsible for ensuring that councillors and administrators can gain information necessary for the performance of their official functions. The general manager and public officer are also responsible for ensuring that members of the public can access publicly available council information under the Government Information (Public Access) Act 2009 (the GIPA Act).*
- 8.2 *The general manager must provide councillors and administrators with information sufficient to enable them to carry out their official functions.*
- 8.3 *Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to exercise their official functions and in accordance with council procedures.*
- 8.4 *Members of staff of Council who provide any information to a particular councillor in the performance of their official functions must also make it available to any other councillor who requests it and in accordance with council procedures.*
- 8.5 *Councillors and administrators who have a private interest only in council information have the same rights of access as any member of the public.*
- 8.6 *Despite clause 8.4, councillors and administrators who are precluded from participating in the consideration of a matter under this code because they have a conflict of interest in the matter, are not entitled to request access to council information in relation to the matter unless the information is otherwise available to members of the public, or the council has determined to make the information available under the GIPA Act.*

3. Procedures

Access to a council file, record or other document can only be provided according to this policy to ensure that access is obtained in ways that are legal and appropriate. This policy does not limit or restrict statutory or common law rights of access.

Councillors can request the General Manager, the public officer or a person nominated by the General Manager to provide access to a particular council record.

Councillors who have a personal (as distinct from official) interest in a document of council have the same rights of access as any other person.

Councillors are entitled to access to all council files, records or other documents where that document is identified as open access information or to a matter currently before the council.

The General Manager shall not unreasonably decide that a document is not relevant to the performance of the councillor's official duty and deny access to a council document. The General Manager must state reasons for the decision if access is refused. Should this avenue be denied then the Councillor has the option of a formal application for information under the Government Information (Public Access) Act 2009.

Generally, a request from a councillor for information will be responded to within 7 days. In some circumstances where the request is more complex the General Manager may within the 7 days advise the councillor that the response will take longer than the normal response period. In this circumstance the General Manager will ensure that the response is provided in the shortest time possible.

6. INTERACTION BETWEEN COUNCILLORS AND COUNCIL STAFF

1. During meetings

The interaction between Councillors and staff at council meetings and committee meetings is regulated by Council's Code of Meeting Practice.

Section 360 of the Local Government Act requires council to adopt a code of meeting practice that incorporates the mandatory provisions of the model code prescribed by the regulations to the Act.

2. Outside of meetings

- The General Manager is responsible to the council for performance and direction of all staff and day to day management of council. Therefore, it is appropriate that all requests for information and approaches to staff outside the forum of a council or committee meeting, be directed to the General Manager, or person/s nominated by the General Manager.
- Only senior officers and managers nominated by the General Manager can provide advice to councillors.

- It is within the discretion of the General Manager to require councillors to make an appointment with a senior officer, to put a request in writing, or to put it on notice to the council to obtain detailed or otherwise time-consuming information. The General Manager must indicate in writing, the reasons for refusing a request.
- It is within the discretion of the General Manager to require councillors to put their requests for detailed information or advice in writing to be answered by the General Manager or the appropriate senior officer. These written requests then form part of council records and can be filed appropriately.
- A senior officer has the discretion to refer any request for information to the General Manager. The senior officer must indicate to the councillor their reasons for the referral.
- If a councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager (or the Mayor if it was the General Manager who refused to provide the advice). If the councillor is still dissatisfied, they may request the information at a meeting of the council.
- Councillors must not attempt to direct staff as to the performance of their work. Staff must report all such attempts immediately to their director or the General Manager.
- Councillors must not request staff to undertake work for the councillor or any other person.
- A councillor, member of staff or delegate must not take advantage of their official position to improperly influence other councillors, members of staff or delegates in the performance of their public or professional duties for the purpose of securing private benefit for themselves or for some other person.

7. ACCESS TO COUNCIL OFFICES

- As elected members of the council, councillors are entitled to have access to the council chamber, committee room, Mayor's office, councillors' rooms, and public areas of the council's buildings.
- Councillors who are not in pursuit of their official duties have the same rights of access to council buildings and premises as any other member of the public.
- A councillor has no rights to enter staff-only areas without the express authorisation of the General Manager or his nominee or by resolution of the council.

8. BREACHES OF THIS POLICY

1. Reporting

- All occasions of a councillor or staff member not complying with this policy should be immediately reported to the General Manager.
- Where the report relates to the conduct of a councillor, the General Manager shall immediately report the matter to the Mayor and to the next council meeting.
- Where the report relates to the conduct of staff, the General Manager shall deal with the matter according to the terms of employment of the staff member. Proven breaches should also be dealt with accordingly, that is, by counselling, disciplinary action or dismissal.
- Where a councillor believes that the General Manager has failed to comply with this policy, the councillor shall immediately report to the Mayor who will report the matter to the council.
- Before a report to council by the General Manager (or the Mayor), the General Manager (or the Mayor) should undertake preliminary inquiries to establish the facts. The preliminary investigation may take any form the Mayor and General Manager considers appropriate, but must involve discussions with the staff member and councillor involved. Natural justice principles need to be satisfied in dealing with an alleged breach.
- The council, or a committee of all councillors established for the purpose, must decide whether a matter reported to it under this policy, reveals a breach. The council may take any steps provided for in this policy that it considers reasonable in the circumstances.

2. Sanctions

Council, having resolved that a councillor has failed to comply with this policy, can, by resolution:

- require the councillor to apologise to the person concerned;
- request a formal apology;
- counsel the councillor;
- reprimand the councillor;
- resolve to make its decision on the matter public;
- pass a censure motion at a council meeting (councils should not underestimate the power of public censure as a deterrent);
- make public disclosures of inappropriate conduct (such as making the community aware of the breach through the media or annual report);
- refer the matter to an appropriate investigative body if the matter is serious; and/or
- prosecute any breach of the law.

Sanctions for staff, depending on the severity, scale and importance of the breach, may include:

- counselling the staff member;
- instituting council disciplinary proceedings; or
- dismissal.

9. RIGHTS OF REVIEW

Should a Councillor be refused access to information then there are avenues available to review the decision. The NSW Office of Local Government and NSW Ombudsman have a complaint handling system in place that may help a councillor to gain access to information. Their contact details are as follows:-

NSW Office of Local Government

Email: olg@olg.nsw.gov.au
 Postal Address: Locked Bag 3015, NOWRA NSW 2541
 Phone: (02) 4428 4100

NSW Ombudsman

General phone: 1800 451 524
 Web: www.ombo.nsw.gov.au
 Complaints can made using the Ombudsman's Online Complaint Form.

Information and Privacy Commission

The NSW Information and Privacy Commission has been established to oversee the GIPA Act. The IPC provides information about the right to access to information and can be contacted via:

Web: www.ipc.nsw.gov.au Email: ipcinfo@ipc.nsw.gov.au
 Mail: GPO Box 7011 Sydney NSW 2001
 Address: Level 15, McKell Building, 2-24 Rawson Place, Haymarket NSW 2000
 Phone: 1800 472 679

Rights of Review under the Government Information (Public Access) Act 2009

There are rights to review a decision made by the Right to Information Officer. A full list of reviewable decisions is set out in the GIPA Act.

Internal Review

If an access application has been refused, there is a general right to seek an internal review of the decision. An internal review must be applied for within 20 working days of the original decision and is subject to a fee. Internal review involves a senior person in the agency reviewing the original decision.

Role of the Information Commissioner

The Information Commissioner can review a decision to refuse access to information if requested by the applicant, notwithstanding any internal review being undertaken. However, for other persons seeking review, an internal review must first be undertaken. The Information Commissioner also deals with complaints under GIPA Act.

External Review (NSW Civil and Administrative Tribunal)

Applicants also have formal avenues via the NSW Civil and Administrative Tribunal (NCAT) to review the decision to refuse access.