

G.16 Confidential Information Policy

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CEO Chief Executive Officer
MCCS Manager Corporate & Community Services
MES Manager Engineering Services
MFS Manager Financial Services

1 OBJECTIVE

To provide guidance in complying with the requirements of the *Local Government Act 2009 and other relevant legislation*, regarding the proper handling of confidential information; and to assist Council in determining what might be considered confidential information and how this information should be handled.

2 SCOPE

This policy applies to:

- current and former Councillors, employees, volunteers and contractors of Quilpie Shire Council; and
- All confidential information held by Quilpie Shire Council.

3 STATEMENT

3.1 INTRODUCTION

It is accepted that Councillors and Council Officers will be in receipt of confidential information including information that may or may not be part of a formal Council meeting. Councillors and Council Officers must use Council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government.

This policy aims to support Councillors and Council Officers in balancing the right and duty to inform the public and consult with constituents about Council business with the interest Council has in preventing disclosure of confidential information.

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

3.2 POLICY STATEMENT

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 that 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 the local government.

It is accepted that Councillors, employees, volunteers and contractors 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 or other advantage.

Whilst endeavouring in the interests of public accountability to limit the number of matters that are considered in confidential sessions, Council acknowledges that it is appropriate to consider certain items in closed meetings.

3.3 RESPONSIBILITIES

Councillors, employees, volunteers and contractors must be aware of their responsibilities and agree (through either the Oath of Office or Code of Conduct) that they should:

- Exercise due care when handling or using information acquired in their role;

- Acknowledge that there will be information that must be treated as confidential, because to release it would prejudice public trust and confidence in the integrity of Council;
- Acknowledge that disclosure of, or unauthorised access to confidential information constitutes a breach of the *Local Government Act 2009* and that Council may take disciplinary action;
- If uncertain, presume information is confidential and seek advice from the CEO prior to any release of, or access to 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;
 - 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.

A Councillor or Council officer must not access Council information except to the extent that it is necessary to do so in order to perform their official duties.

It is an offence under the Local Government Act for past or present Councillors, Council Officers and contractors to make improper use of information that they have acquired as a virtue of their position with Council.

3.4 CONFIDENTIAL INFORMATION

The following types of information are deemed confidential to Council unless or until the Council resolves to the contrary:

- Commercial in confidence information, including where the release of information would affect a company's competitive advantage (particularly including competitive tender situations);
- Information derived from government departments or Ministers that have been classified as confidential;
- Information of a personal nature or about personal affairs, for example the personal details of Councillors or employees;
- 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 relating to clients of Council;
- Information not owned or controlled by Council;
- Information that could result in any action being taken against Council for defamation;
- Information involving legal advice to Council or a legal issue or a matter before the courts;
- Information that is expressly given in confidence;
- Information examined or discussed at Councillor briefing sessions, unless the CEO declares that such information (or part thereof) is not confidential; or
- Information about:

- The appointment, dismissal or discipline of employees;
- Individual employment conditions, performance or other individual work related matters of employees;
- Industrial matters affecting employees;
- The local government's budget;
- Rating concessions;
- Contracts proposed to be made by it;
- Starting or defending legal proceedings involving it; or
- Any action to be taken by Council under the *Sustainable Planning Act 2009* or the *Planning Act 2016* including deciding applications made to it under the Act.

It is acknowledged that some of the above classes of information may need to be disclosed from time to time for legal reasons or in accordance with the *Right to Information Act 2009*.

3.5 CONFIDENTIAL INFORMATION AT COUNCIL MEETINGS

Nevertheless, this policy deems, as a minimum, the following may occur relating to matters addressed at the Council table:

- The CEO may make a declaration that information concerning a specific matter is to be treated as confidential to Council and the information will remain confidential unless or until Council resolves to the contrary;
- An item on a Council meeting agenda, including the information contained in the documentation or supporting material, that is declared confidential by the CEO is to remain confidential unless or until the Council table resolves to the contrary;
- If the Mayor or a Councillor in a meeting asks that a matter be treated as confidential, the Council table will formally resolve as to whether all information concerning the matter is confidential;
- If the Council table exercises its powers to close a meeting to members of the public, all information in relation to the matters discussed during that closed meeting or the closed portion of the meeting is confidential, unless and until the Council table resolves to the contrary;
- Confidential information will be clearly identified, where possible, as confidential;
- Any information of a type deemed to be confidential is presumed to be confidential to Council and must not be released without seeking advice from the CEO; and
- If there is any doubt as to whether Council considers information confidential, it should be assumed that Council intends the information to be confidential until the doubt is resolved at a subsequent meeting at the Council table.

3.6 RELEASE OF CONFIDENTIAL INFORMATION

Any release of confidential information for any purpose to any person or organisation (other than to those who are entitled to the information) is a breach 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.

3.7 BREACH OF THIS POLICY

3.7.1 General

Legislation makes it clear that when Councillors, employees, volunteers or contractors, in the course of carrying out their duties, receive information that is not available to the public they must not misuse the information, particularly for personal gain.

A person may make a complaint about a statutory breach by a Councillor of this provision by giving written notice of the complaint to the local government's CEO.

A person may make a complaint about a statutory breach by an employee, volunteer or contractor in line with Council's Complaint Management Policy.

3.7.2 By Staff

A breach of this policy by staff will result in disciplinary action being taken in accordance with Council's Code of Conduct and Council's Performance and Misconduct Policy.

Matters will be referred to a relevant agency if required.

3.7.3 By a Councillor

A person may make a complaint about a breach by a Councillor of section 171(3) by giving notice of the complaint to the Council's CEO. A breach of section 171(3) is "misconduct" (see the definition of "misconduct" in section 176(3)(c) of the LGA). Allegations of misconduct must be referred by the Council's CEO to the chief executive of the Department of Infrastructure, Local Government and Planning (see section 177(6) of the LGA).

Thereafter the chief executive of the Department of Infrastructure, Local Government and Planning must refer the complaint to the Local Government Remuneration and Discipline Tribunal (see section 177(14) of the LGA). If the Local Government Remuneration and Discipline Tribunal decides that a Councillor has breached section 171(3), section 180(5) provides that the Local Government Remuneration and Discipline Tribunal may make any one or more of the following orders or recommendations: -

- a) an order that the Councillor be counselled about the misconduct, and how not to repeat the misconduct;
- b) an order that the Councillor make an admission of error or an apology;
- c) an order that the Councillor participate in mediation with another person;
- d) a recommendation to the Department's Chief Executive to monitor the Councillor or the local government for compliance with the Local Government Acts;
- e) an order that the Councillor forfeit an allowance, benefit, payment or privilege;
- f) an order that the Councillor reimburse the local government;
- g) a recommendation to the Minister that the Councillor be suspended for a specified period, either wholly or from performing particular functions;

Examples of particular functions—

- attending council meetings or offices;
- representing the council at public functions
- h) a recommendation to the Minister that the Councillor be dismissed;
- (i) a recommendation to the Crime and Corruption Commission or the Commissioner of Police that the Councillor's conduct be further investigated.

4 DEFINITIONS

CCC		Crime and Corruption Commission
CEO		<i>Chief Executive Officer</i> A person who holds an appointment under section 194 of the <i>Local Government Act 2009</i> . This includes a person acting in this position.
Contractor		A person, organisation or entity that performs a specific act or acts including the provision of services and/or materials to another person, organisation or entity under an agreement enforceable by law.
Council		Quilpie Shire Council
Councillor Session	Briefing	A non-decision making forum 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 sensitive 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.
Council Table		The body of elected Councillors of Quilpie Shire Council
Councillor/s		The Mayor and Councillors of Quilpie Shire Council, within the meaning of the <i>Local Government Act 2009</i> .
Employee		<i>Local government employee:</i> (a) the chief executive officer; or (b) a person holding an appointment under section 196 of the <i>Local Government Act 2009</i> .
Information		Information in any number of forms including letters, reports/documents, facsimiles, attachments, tapes, emails, electronic media, and/or other forms of information including discussions during meetings.
Manager		3 rd line management – Quilpie Shire Council Structure
Volunteer		Any person, who of their own free will, offers to undertake un-paid work for Council and is accepted as a Volunteer by the Chief Executive Officer and/or his authorised delegates.

5 RELATED POLICIES | LEGISLATION | OTHER DOCUMENTS

Crime and Corruption Act 2001

Local Government Act 2009

Planning Act 2016

Public Interest Disclosure Act 2010

Right to Information Act 2009

Sustainable Planning Act 2009

Crime & Corruption Commission Paper “Unauthorised Access, Disclosure and the Risks of Corruption in the Queensland Public Sector”

IX #	Details
91089	G.03 Administrative Actions Complaint Policy
91099	G.04 Councillor Code of Conduct Policy
91583	G.12 Personal Information Privacy Policy
91130	G.18 Public Interest Disclosure Policy
91102	G.107 Performance and Misconduct Policy
94362	Code of Conduct