

## MANAGEMENT OF CONFIDENTIAL INFORMATION GENERAL POLICY

### Intent

To ensure Councillors and Officers of Douglas Shire Council understand the requirements for management of all confidential information.

### Scope

This policy applies to all persons who are or have been a Councillor and to all persons who are or have been an employee, contracted staff or volunteer of Douglas Shire Council regarding information they have acquired whilst engaged by Council.

### Reference

#### Legislation

*Local Government Act 2009*

*Local Government Regulation 2012*

*Information Privacy Act 2009*

*Right to Information Act 2009*

### 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. 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 the local government.

It is accepted that Councillors and staff will be in receipt of confidential information acquired during the normal conduct of their duties with Council. 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.

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

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

This policy does not override an individual Councillor's or staff 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.

### Definitions

For clarity the following definitions are provided:

'Information' is knowledge communicated or received concerning some fact or circumstance; news and knowledge on various subjects, however acquired. Information comes in any number of forms including letters, reports/documents, facsimiles, attachments, tapes, emails, electronic media, and/or other forms of information including discussions during formal and informal meetings.

Workshops and/or Briefing Sessions' 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 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.

### **Confidential Information**

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

- 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 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 Council staff.
- 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.
- Information that is expressly given to Councillors or staff in confidence.
- Information examined or discussed at Councillor workshops or briefing sessions, unless the 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 deliberations
  - 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 *Sustainable Planning Act 2009*, including deciding applications made to it under that Act.
  - other business for which a public discussion would be likely to prejudice the interests of the local government or someone else, or enable a person to gain a financial advantage.

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 *Right to Information Act 2009* and the *Privacy Act 2009*.

**Closed Session Reports**

Under the *Local Government Regulation 2012* Council may resolve to consider a meeting to be closed to the public to discuss matters of a confidential nature.

The Chief Executive Officer has the responsibility of preparing the agenda for a Council meeting. In doing that the agenda will indicate items in open and closed session. However, this is essentially a recommendation and the final decision of what is handled in closed session is determined by the meeting.

Nevertheless, this policy deems that as a minimum:

- An item on a Council meeting agenda and the information contained in the documentation or supporting material that has been identified as a closed session item is to remain confidential.
- If Council exercises its powers under the *Local Government Regulation 2012* to close its 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
- Any information of a type deemed to be confidential is to be presumed by Councillors and staff to be confidential to Council and must not be released without seeking advice from the CEO.
- 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.

**Workshops and/or Briefing Sessions**

Should the Chief Executive Officer or relevant General Manager consider that a matter under discussion should remain confidential, then a recommendation will be made for the consideration of Councillors present. This decision must be ratified when the matter is brought to a subsequent meeting of Council, but the embargo would apply in the interim.

Should the Chief Executive Officer or relevant General Manager be satisfied that part or all of the material should be publicly available, then a recommendation to that effect will be put to the Closed Session of a full Council meeting.

**Responsibilities of Councillors and Staff**

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

- 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*;
- if uncertain, presume information is confidential, and seek advice from 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.

**Use of Information by Councillors**

Section 171 of the *Local Government Act 2009* states:

- (1) A person who is, or has been, a Councillor must not use information that was acquired as a Councillor to—
  - (a) gain, directly or indirectly, a financial advantage for the person or someone else; or
  - (b) cause detriment to the local government.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to information that is lawfully available to the public.
- (3) A Councillor must not release information that the Councillor knows, or should reasonably know, is information that is confidential to the local government.

Note—A contravention of subsection (3) is misconduct that is dealt with by the tribunal.

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*.

**Use of Information by Staff**

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

- (1) This section applies to all local government employees, including the Chief Executive Officer.
- (2) A **local government employee** includes—
  - (a) a contractor of the local government; and
  - (b) a type of person prescribed under a regulation.
- (3) 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.

- (4) Subsection (3) does not apply to information that is lawfully available to the public.
- (5) 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 policy is to remain in force until otherwise determined by Council.

Manager Responsible for Review:

Manager Governance

ORIGINALLY ADOPTED: 16/06/2015

CURRENT ADOPTION:

DUE FOR REVISION: 16/06/2019