

 Central Highlands Regional Council	CENTRAL HIGHLANDS REGIONAL COUNCIL POLICY	
	Councillors Confidentiality	POLICY REF NO CHRCP: 0030

1.0 Policy Purpose

- 1.1 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.
- 1.2 This policy applies to confidential information held by council and councillors.
- 1.3 Section 171 (3) of the LGA 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.

Note: a contravention of subsection (3) is misconduct.

2.0 Policy Statement

- 2.1 Councillors must use council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government.
- 2.2 This policy aims to support councillors 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.
- 2.3 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 LGA or any other legislation or subordinate legislation to disclose or publish information where this is required by law.
- 2.4 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 and its committees. Therefore, information should ordinarily be released to the public unless there are compelling reasons which indicate that this is not in the public interest.
- 2.5 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.
- 2.6 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.
- 2.7 Whilst endeavouring in the interests of public accountability to limit the number of matters which

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Adoption Date: 20/10/2021	Amended Date:	Document Name: Councillors Confidentiality Policy
Revokes: Document Set ID: 1444317	Review Date:	Page 1 of 5
Version: 0, Version Date: 18/04/2024	Version:	

are considered in confidential sessions, council acknowledges that it is appropriate to consider certain matters in closed meetings.

3.0 Confidential Information

- 3.1 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:
- 3.1.1 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.
 - 3.1.2 Information obtained from government departments or ministers that has been classified as confidential.
 - 3.1.3 Information of a personal nature or about personal affairs, for example the personal details of citizens, councillors or council staff.
 - 3.1.4 Information relating to a property disposal or acquisition process where release of the information may prejudice Council (see also section 171(1) of the LGA).
 - 3.1.5 Financial and legal analysis where the disclosure of that information may compromise council or someone else or waive legal professional privilege.
 - 3.1.6 Information that could result in action being taken against council for defamation.
 - 3.1.7 Information involving the provision of legal advice to council or about a legal issue or a matter before a court, commission or tribunal.
 - 3.1.8 Information that is expressly given to councillors in confidence.
 - 3.1.9 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.
 - 3.1.10 Information subject to a contractual obligation requiring council to maintain confidentiality over the information.
 - 3.1.11 Information subject to an obligation in the *Crime and Corruption Act 2001* to maintain confidentiality over the information.
 - 3.1.12 Information subject to an obligation in the *Public Interest Disclosure Act 2010* to maintain confidentiality over the information.
 - 3.1.13 Information examined or discussed at councillor briefing sessions, unless the Chief Executive Officer declares that such information (or part thereof) is not confidential.
 - 3.1.14 Information about:
 - 3.1.14.1 The appointment, dismissal or discipline of employees.
 - 3.1.14.2 Industrial matters affecting employees.
 - 3.1.14.3 Council’s budget.

Electronic version current – uncontrolled copy valid only at time of printing

Adoption Date: 20/10/2021	Amended Date:	Document Name: Councillors Confidentiality Policy
Revokes: Document Set ID: 1444317	Review Date:	Page 2 of 5
Version: 0, Version Date: 18/04/2024	Version:	

- 3.1.14.4 Rating concessions.
- 3.1.14.5 Contracts proposed to be made by council.
- 3.1.14.6 Starting or defending legal proceedings involving council.
- 3.1.14.7 Any action to be taken by the local government under the *Planning Act 2016*, including deciding an application made to it under that Act.

3.2 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 to make the information or document available for inspection and/or purchase (for example, the Planning Regulation 2017 contains a list of material that local governments, assessment managers and referral agencies must keep available for inspection and/or purchase) or in accordance with the *Right to Information Act 2009*.

4.0 Release of Confidential Information

- 4.1 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 LGA. Release includes:
 - 4.1.1 Orally telling any person about the information or any part of the information.
 - 4.1.2 Providing the original or a copy of documentation or any part of the documentation that is marked confidential.
 - 4.1.3 Paraphrasing – putting into your own words – any confidential information and providing that in writing or orally.

5.0 Breach of this Policy

- 5.1 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 Chief Executive Officer. A breach of section 171(3) is “misconduct”.
- 5.2 Allegations of misconduct must be referred to the Office of Independent Assessor by the Chief Executive Officer or by a councillor who becomes aware of the misconduct.
- 5.3 If the assessor decides that a councillor has breached section 171(3) of the Act, the assessor may make any one or more of the following orders or recommendations:
 - 5.3.1 Dismiss the complaint about the conduct of the councillor.
 - 5.3.2 If the assessor reasonably suspects the councillor’s conduct is inappropriate conduct – refer the suspected inappropriate conduct to the local government to deal with; or
 - 5.3.3 If the assessor is reasonably satisfied the councillor’s conduct is misconduct – make an application to the Councillor Conduct Tribunal about the conduct; or
 - 5.3.4 If the assessor is reasonably satisfied the councillor’s conduct is inappropriate conduct and the conduct is connected to conduct of the councillor that the assessor is reasonably satisfied is misconduct—make an application to the Councillor Conduct Tribunal about the alleged misconduct and inappropriate conduct.
 - 5.3.5 Take no further action in relation to the conduct.

Electronic version current – uncontrolled copy valid only at time of printing

Adoption Date: 20/10/2021	Amended Date:	Document Name: Councillors Confidentiality Policy
Revokes: Document Set ID: 1444317	Review Date:	Page 3 of 5
Version: 0, Version Date: 18/04/2024	Version:	

- 5.4 If the Councillor Conduct Tribunal decides that a councillor has breached section 171(3) of the Act, the Tribunal may make any one or more of the following orders or recommendations:
- 5.4.1 Order that the councillor make a public admission that the councillor has engaged in misconduct or inappropriate conduct.
 - 5.4.2 An order reprimanding the councillor.
 - 5.4.3 An order that the councillor attend training or counselling to address the councillor's conduct.
 - 5.4.4 Order that the councillor pay to the local government an amount that is not more than the monetary value of 50 penalty units.
 - 5.4.5 Order that the councillor reimburse the local government for all or some of the costs arising from the councillor's misconduct or inappropriate conduct (or both).
 - 5.4.6 Order that the councillor is not to attend a stated number of local government meetings, up to a maximum of 3 meetings.
 - 5.4.7 Order that the councillor is not to act as the deputy mayor or a chairperson of a committee of the local government for the remainder of the councillor's term.
 - 5.4.8 Order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor.
 - 5.4.9 Order that the councillor forfeit an allowance, benefit, payment or privilege paid or provided to the councillor by the local government.
 - 5.4.10 Order that the councillor is to forfeit, for a stated period, access to equipment or a facility provided to the councillor by the local government; or
 - 5.4.11 A recommendation to the Minister that the councillor be suspended from office for a stated period or from performing particular functions of the office.

Strategic Link	s 171, Local Government Act 2009 s 3, Right to Information Act 2009. Planning Act 2016 s 66, Crime and Corruption Act 2001 s 65, Public Interest Disclosure Act 2010
Category	Elected Members
Lead Business Unit	Governance
Public Consultation	No
Adoption Date	20 October 2021

Electronic version current – uncontrolled copy valid only at time of printing

Adoption Date: 20/10/2021	Amended Date:	Document Name: Councillors Confidentiality Policy
Revokes: Document Set ID: 1444317	Review Date:	Page 4 of 5
Version: 0, Version Date: 18/04/2024	Version:	

Next Review Due	
Document Number	1444317
Record Keeping	ECM, Vine, Council Website
Related Documents	Councillors Code of Conduct

Electronic version current – uncontrolled copy valid only at time of printing

Adoption Date: 20/10/2021	Amended Date:	Document Name: Councillors Confidentiality Policy
Revokes: Document Set ID: 1444317	Review Date:	Page 5 of 5
Version: 0, Version Date: 18/04/2024	Version:	