

Public Transparency Policy

November 2023

Council

PURPOSE

The purpose of this policy is to set out the commitment of the City of Adelaide (CoA) to provide public access to Council and Committee meetings and associated documents and establish a Policy that will guide why and how the CoA may use the provisions in the *Local Government Act 1999* (Act) to restrict public access where necessary and appropriate.

OPERATION

Transparent decision making promotes a positive and productive relationship between the Council and the community. It allows the community to have a greater sense of ownership and connection to decisions made by the Council.

Transparent decision making in local government supports accountability, encourages high performance and also increases public confidence in councils and their processes and decisions. Individuals will not always agree with Council decisions, but transparency allows them to scrutinise and understand the reasoning in the decision-making process.

The following principles will be applied by Council Members and Council Officers in facilitating transparent decision making.

Council and Committee Meetings

- The CoA will conduct all formal Council and Council Committee meetings in public and will provide public access to all documents considered at these meetings except where the strict circumstances outlined in the Act have been considered and it is determined necessary and appropriate for Council or Committee to order that the public be excluded [refer to Appendix 1 and 2].
- Meetings will only be closed to the public in circumstances where the Council or Committee is clearly satisfied that the need for confidentiality outweighs the principles of transparent decision making.
- The provisions of the Act that enable Council and Council Committees to receive, discuss or consider information in confidence are necessary for the maintenance of good governance. These provisions can and should be relied upon in the special circumstances where it is determined to be necessary and appropriate to order that the public be excluded.

Public Interest Test

- In circumstances that require the Council or Committee to determine whether receiving, discussing or considering information in an open meeting would be, on balance, contrary to the public interest, the following principles will be applied:

- there is an overriding presumption towards public access to formal Council and Committee meetings and associated documents;
- the public interest considerations against public access are limited only to the grounds for confidentiality set out in Section 90(3) of the Act (Refer to Appendix 1);
- it must be clearly established and explained that the harm or detriment that would reasonably be expected to flow from public access is real and substantial;
- matters that are not relevant, such as potential for Council or the Committee to experience embarrassment, loss of confidence or adverse criticism as a result of public access, will be disregarded; and
- where the factors for and against public access are evenly balanced, public access should be allowed.

Council and Committee Reports

- Where the Chief Executive Officer, in consultation with the Lord Mayor, believes that a matter should be considered in confidence, the nature of the matter and the reasons why it should be considered in confidence will be clearly stated on the agenda for the meeting which is made available to the public.
- Reports, recommendations and resolutions will be presented or framed, wherever possible, so that as much information as possible can be made available to the public.

Third Party Information

- CoA is regularly provided with information from third parties of a commercial or confidential nature. It is reasonable and appropriate to expect that CoA will preserve the confidentiality of this information where permissible in accordance with the provisions of the Act.
- Prior to entering into a contract or agreement with a third party, CoA will take reasonable steps to inform the third party of the type of information that will be released and when and how it will be released.
- Use or disclosure of personal information that is not confidential for the purposes of the Act will be in accordance with the CoA Privacy Policy.

Review of Confidentiality Orders

- All orders made by Council or Committee under Section 91(7) of the Act that all or part of a document be kept confidential will clearly specify either the duration of the order or the specific circumstances in which the order will cease to apply.
- All confidentiality orders that continue to operate will be reviewed no less than once every six (6) months to assess whether the grounds for non-disclosure remain appropriate and necessary.
- Information will be released as soon as practicable following the expiry or revocation of a confidentiality order.

- Where it is determined that it is necessary and appropriate to retain or extend an order made under Section 91(7), the relevant grounds and reasons will be clearly documented.
- Where the grounds for and against retaining or extending the operation of an order are evenly balanced, the order should be revoked.

Accountability and Reporting

- The CoA Annual Report will contain the following information about the use of confidentiality provisions:
 - The number of occasions each of the confidentiality provisions of the Act was used, categorised by the section of the Act relied upon.
 - A summary of and commentary on the reasons for the use of the confidentiality provisions in that year.
 - The total number of agenda items considered in that year and the proportion of items where confidentiality provisions were utilised.
 - The number of items that were released from confidentiality, in part or in full, in that year.
 - The number of items where a confidentiality order remains operative and the reasons why the order remains necessary and appropriate.

Proactive Disclosure

- The CoA may routinely publish regularly requested information on its website to make this information available to all members of the public without requiring a Freedom of Information request.
- The CoA may establish a disclosure log to enable central access to non-personal information that it has released under the *Freedom of Information Act 1991* (the FOI Act). This will help information that may be of interest to the public to be readily identified and accessed by the community at large.

Access to Information

- Access to council documents is facilitated in accordance with the CoA Information Statement prepared under the FOI Act.

OTHER USEFUL DOCUMENTS

Related documents

- Acquisition and Disposal of Land and Assets Policy
- Elected Members Standing Orders
- Privacy Policy
- Procurement Policy
- Information Statement

Relevant legislation

- Local Government Act 1999
- City of Adelaide Act 1998
- Freedom of Information Act 1991
- Privacy Act 1988

GLOSSARY

Throughout this document, the below terms have been used and are defined as:

Key word: explanation

Act: means the Local Government Act 1999

CoA: means the Corporation of the City of Adelaide

Chief Executive Officer: means the person appointed to the office of Chief Executive Officer of the City of Adelaide

Council Members: means the elected members of the CoA.

Council Officers: means any employee, contractor, consultant, temporary member of staff working for, or on behalf of, the CoA.

Meeting(s): means a meeting formal meeting of Council or a Committee held in accordance with the Local Government Act 1999

ADMINISTRATIVE

As part of Council’s commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every **3** years unless legislative or operational change occurs beforehand. The next review is required in **2026**.

Review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
ACC2023/XXXXX	Council	28/11/2023	New policy

Contact:

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APPENDIX 1**Related Provisions of the Local Government Act 1999**

Chapter 6 of the Act sets out the arrangements for Council and Council Committee meetings. These meetings are to be held in public except where special circumstances exist as prescribed in the Act and a Council or Committee orders that the public be excluded.

There are very strict circumstances in which a discussion or document considered in a Council or Committee meeting can be kept confidential. These provisions are covered in the following sections of the Act:

- 83(5) Council and 87(10) Committee – the Chief Executive may, after consultation with the principal member of Council, or in the case of a Committee the presiding member, indicate on a document or report provided to the members of the Council or the Committee that the matter may, if the Council or Committee so determines, be considered in confidence. The Chief Executive is required to specify at the same time the basis on which such an order can be made.
- 90(2) and (3) - circumstances where Council may order that the public can be excluded from attendance at a meeting, or part of it, to enable a matter to be considered in confidence. [Refer Appendix 2 for an exhaustive list of the special circumstances)
- 91(7) – circumstances where a document considered in confidence can be ordered to remain confidential.
- 91(8) – circumstances where a Council must not order that a document remain confidential.
- 91(9) – the Council or Committee must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order will be reviewed. The power to revoke an order can also be delegated to an employee of Council.
- 92 – requires the Council to prepare and adopt a Code of Practice relating to access to meetings and documents. Prior to adoption, alteration or substitution the proposed Code (or changes) must be available for inspection and purchase. Council is also required to follow the relevant steps set out in its public consultation policy. Council must, at least once in every financial year, review the Code.
- 94 – provides that the Ombudsman may, on receipt of a complaint, investigate the use of these provisions.

APPENDIX 2

Section 90(3) of the Act outlines the grounds on which it may be necessary and appropriate for a meeting of Council or a committee to be closed to the public. These grounds are exhaustive and no other reasons may be considered when determining whether the receive, discuss or consider information in confidence.

Section 90 Reference	Description
90(3)(a)	Information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
90(3)(b) (i) and (ii)	Information the disclosure of which— (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and (ii) would, on balance, be contrary to the public interest;
90(3)(c)	information the disclosure of which would reveal a trade secret
90(3)(d) (i) and (ii)	commercial information of a confidential nature (not being a trade secret) the disclosure of which— (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest;
90(3)(e)	matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;
90(3)(f)	information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
90(3)(g)	matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty
90(3)(h)	legal advice
90(3)(i)	information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council
90(3)(j) (i) and (ii)	information the disclosure of which— (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and (ii) would, on balance, be contrary to the public interest;
90(3)(k)	tenders for the supply of goods, the provision of services or the carrying out of works
90(3)(m)	information relating to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the <i>Planning, Development and Infrastructure Act 2016</i> before the draft

	instrument or amendment is released for public consultation under that Act
90(3)(n)	information relevant to the review of a determination of a council under the FOI Act;
90(3)(o)	information relating to a proposed award recipient before the presentation of the award