

POLICY

Policy Name	Council Member Access to Information
Policy Category	Governance
Department / Officer	Office of Chief Executive Officer/Governance
Date Adopted	November 2005
Date/s Reviewed	September 2011; 27 October 2014, 25 November 2019
Review Frequency	Every three years
Strategic Plan Reference	Objective 5 – An innovative Council empowering the community Approach 5.1 Cultivate and demonstrate community leadership Strategy 5.1.5 Support Elected Members to fulfill their role as the governing body of Council
Attachments	Nil

1. Purpose

The purpose of this policy is to ensure that Council Members have access to information in connection with the performance or discharge of the functions or duties as a Member.

2. Scope

This Policy applies to all requests for information by Council Members to Council Employees.

3. Policy Statement (Summary)

All Council Members will have equal access to information to assist them in performing their functions and duties for making informed decisions.

4. Legislation and Compliance

Pursuant to section 61 of the *Local Government Act 1999*: ‘

- (1) *A member of a council is entitled at any reasonable time, in connection with the performance or discharge of the functions or duties of the member (whether under this or another Act), without charge, to have access to any relevant council document, including (but not limited to) –*
- a) A copy of a written contract entered into by the council, or a copy of a document relating to a contract that is proposed to be entered into by the council;*
 - b) Accounting records kept by the council;*
 - c) Financial statements and other documents prepared by the council under Chapter 8.*

- (2) *A request for access to a document under subsection (1) should be directed to the Chief Executive Officer, or another officer specified by the Chief Executive Officer for the purposes of this section.*
- (3) *The Chief Executive Officer or another officer providing access to a document under subsection (1) may indicate to the member that information contained in the document is, or should be considered as, confidential.*

Pursuant to Section 62 of the *Local Government Act 1999* states:

- (3) *A Member or former Member of a Council must not, whether within or outside the State, make improper use of information acquired by virtue of their position as a member of the Council to gain, directly or indirectly, an advantage for him or herself, or for another person or to cause detriment to the Council.*
- (4) *A member of a Council must not, whether within or outside the State, make improper use of his or her position as a member of the Council to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council.*

Maximum penalty: \$10,000 or imprisonment for two years.

Note a breach of the Local Government Act 1999 - as set out above is a matter which a criminal penalty attaches. Alleged breaches should be reported to the Office for Public Integrity refer Council's Fraud and Corruption Prevention Policy.

Pursuant to Clause 3.3 of the *Code of Conduct for Council Members*, Council Members must not release or divulge information that the Council has ordered be kept confidential, or that the Council Member should reasonably know is information that is confidential, including information that is considered by Council in confidence.

Note: a breach of the Code of Conduct where there is reasonable suspicion of serious or systemic misconduct in public administration should be reported to the Office of Public Integrity also refer Council's Fraud and Corruption Policy.

Pursuant to section 18 of the *Local Government (Procedures at Meetings) Regulations 2013*:

- (1) *A Member may require the Chief Executive Officer to table any document of the Council relating to a motion that is before a meeting (and the Chief Executive Officer must then table the documents within a reasonable time, or at a time determined by the presiding member after taking into account the wishes of the meeting, and if the member who has required the tabling is unwilling to vote on the motion until the documents are tabled, then the matter must not be put to the vote until the documents are tabled).*
- (2) *The Chief Executive Officer may, in tabling a document, indicate that in his or her opinion consideration should be given to dealing with the document on a confidential basis under Section 90 or 91 of the Act.*

5. Definitions

Act means the Local Government Act 1999

CEO means the Chief Executive Officer or Acting Chief Executive Officer of the City of Victor Harbor

Council Employees means any persons that is employed full-time, part-time or casually by council who receives remuneration for their work.

Confidential information (taken from the Council Member Code of Conduct) means a document that Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence.

Council Member means a person appointed or elected as a councillor of the City of Victor Harbor.

Detriment means: the act of causing disadvantage or damage (to a person or the interests of the Council); the state of being harmed or damaged.

6. Policy Content

6.1 Request for access to Council information or documents

- 6.1.1 A Council Member will be provided access to all documents held by Council that are relevant to the performance of the Member's functions or duties.
- 6.1.2 All Council Member requests for Council information or documents must be directed to the CEO and will be recorded in the Register of Member's Requests. The request may be made in person, by phone or in writing eg by e-mail. A form is available for this purpose which may require the requesting Member to sign a declaration of confidentiality.
- 6.1.3 Members are required where practical to make any requests for information/documents in a timely and considerate manner to minimise the impact on Council Employees/public resources.
- 6.1.4 The request should:
 - 6.1.4.1 identify the document/s or information being sought with enough detail for the document/s or information to be identified and retrieved.
 - 6.1.4.2 state the reason(s) for the request.
 - 6.1.4.3 form of access preferred by the Member eg read only, copies provided, electronic pdf.

6.2 Processing the Request

- 6.2.1 Unless there is a clear and valid reason to the contrary, a Council Member will be provided access to information or document/s if they are held by Council. Where access to a document is not provided, the reason for denial of such access should be given to the Council Member in writing.
- 6.2.2 Generally, debates about 'relevance' to a Member's role and function will be avoided unless a request is complex and/or involves relatively substantial amounts of Council/public expenditure, in which case Section 59(1)(a)(i, ii, & iii) will be referred to. The CEO may also require a decision of Council prior to granting access.

6.3 Provision of information/document

- 6.3.1 The 'form of access' to the document/s will be negotiated with the Council Member to take into consideration the particular needs of the Member, administrative efficiency and the degree of sensitivity in relation to the document. Access to information will be in accordance with statutory requirements and best practice from a probity and process perspective. In some cases access may be limited to 'view only' at a mutually convenient time at the Council office.
- 6.3.2 Where access is granted to a document or other information of a sensitive nature, a copy of the e-mail advice will also be sent to other Council Members. A general principle is that advice or information to one Member should be available to all.
- 6.3.3 The CEO should indicate to Council Members, if information contained in the document is, or should be considered as confidential.
- 6.3.4 Council Members must not use confidential information to gain advantage for themselves or for any other person or body, in ways which are inconsistent with their obligation to act impartially, or to improperly cause harm or detriment to any person or organisation.

6.4 Grievance Procedure

- 6.4.1 A Council Member may seek to have a decision by the CEO to withhold Council document(s) or other information reviewed by Council itself. This process will be dealt with under Council's 'Internal Review of a Council Decision' procedure.
- 6.4.2 A Council Member may also lodge a complaint with the Ombudsman, who may carry out an investigation if it appears (to the Ombudsman) that the CEO may have unreasonably denied or delayed access due to an unreasonable impact on Council resources.

6.4.3 This Policy does not negate any obligations that apply under the *Freedom of Information Act 1991*.

6.5 Tabling of information

6.5.1 Section 18 of the Regulations makes provision for a Member to require the CEO to table a document relating to a motion before a meeting.

6.5.2 The Presiding Member should determine the application of this provision at the meeting, if necessary advised by the CEO and taking into account the wishes of the meeting.

6.5.3 The CEO is responsible for actioning such requests and determining what other Council Employee involvement may be necessary to ensure delivery of the requested documents to Council for tabling.

6.6 Council Member enquiries

6.6.1 The administration's role is to advise Council, implement Council decisions, deliver the services and implement and manage processes and procedures.

6.6.2 Council Members are encouraged to contact the CEO or the Director Community and Development, Director Corporate and Customer Service, Director Environment and Infrastructure, Group Manager Governance and Finance for advice and support which may lead to seeking advice from lower level Council Employee.

6.7 Agenda enquiries and Council reports

6.7.1 The Council report is the formal means for providing advice to Council Members and provides relevant data, issues, options and advice to enable Members to consider the matter and make a decision at the Council meeting.

6.7.2 It is expected and encouraged that Members may wish to ask questions or seek clarification on a report prior to the Council meeting. Report authors should make themselves available prior to a Council meeting to assist Members with enquiries. This practice will facilitate the smooth running of the Council meeting and improve the efficiency of the decision making process.

6.8 Minute enquiries

6.8.1 Council Members are encouraged to contact the Chairperson of the meeting with enquiries about resolutions in the minutes (also refer to Council's Code of Practice for Meeting Procedures').

7. Risk Management

This document provides a policy response to meet legislative requirements.

8. Implementation/Delegations

The Chief Executive Officer is delegated authority to implement this Policy.

9. Related Documents

Code of Conduct for Council Members
Fraud and Corruption Prevention Policy

10. Availability of Policy

This policy is available on Council's website at www.victor.sa.gov.au. It may also be inspected or purchased at the Principal Office of the Council at 1 Bay Road, Victor Harbor.