



# Confidentiality Policy

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<b>Endorsement</b>	Executive 8 September 2016 Policy Review Panel 15 December 2016
<b>Authorisation</b>	Council 6 February 2017
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<b>Responsible officer</b>	Manager Legal & Governance
<b>Policy owner</b>	Manager Legal & Governance

## 1. Purpose

To provide guidance for councillors and officers on dealing with the use of information that may be deemed confidential to the Council.

## 2. Scope

This policy applies across all of Council.

The objectives of this policy are to:

- a) Recognise that section 77 of the Act deems that the disclosure of information by a Councillor, former Councillor or member of a special committee knows or should reasonably know is confidential is an offence which carries a penalty;
- b) Recognise that Councillors and Council officers will be in receipt of confidential information that is not always part of a formal Council Meeting;
- c) Acknowledge the need for Councillors and Council officers to be informed, and to inform and consult with constituents, about the business before the Council; and
- d) Acknowledge that the requirement to keep matters confidential intersects with decisions made pursuant to section 89 of the Act as to which matters may or should be considered 'In Camera.'

This policy does not override:

- a) An individual Councillor's and/or Council officer's statutory obligation(s) in respect of the use of information or the necessity of disclosing any direct or indirect pecuniary interest in a matter under consideration by Council or otherwise; or
- b) The Council's or Councillor's or Council Officer's obligations under law to disclose or publish information required by law to be disclosed or published (such as may be required by a subpoena).

## 3. Definitions

Word/Term	Definition
The Act	Refers to the <i>Local Government Act 1989</i>
The Council	Refers to Melton City Council
Information	Includes but is not limited to original or copies of letters, reports, documents, facsimiles, attachments, tapes, electronic media and all other forms of information.
Special committee	has the meaning given to it by the Act.

## 4. Policy

The policy is to provide guidance for Councillors and Council officers on dealing with the use of information that may be deemed confidential to the Council.

### 4.1 Information deemed confidential

- a) Section 77 of the Act deems that a person who is or has been a Councillor or member of a special committee must not disclose information which a 'person knows, or should reasonably know' Council wishes to keep confidential.
- b) Without in any way affecting the application of the Act, this policy deems that at a minimum, a person should reasonably know that:
  - i. An agenda item which is marked 'Confidential' is intended to be confidential;
  - ii. If a meeting of Council or special committee resolves that an item is to be confidential, it is intended to be confidential;
  - iii. If the Mayor, as Chairperson of a Council meeting or any special committee, or the Chief Executive Officer asks that a matter be treated as confidential and no attendee present indicates an intention not to respect that request, the matter is intended to be confidential. In the event that an attendee does indicate to the contrary, Council will formally resolve, by majority, as to whether the issue shall remain confidential;
  - iv. If the Council or special committee exercises its power under section 89(2) of the Act to close its meeting to members of the public, matters discussed during that closed meeting or the closed portion of the meeting are intended to be confidential unless there is a resolution to the contrary;
  - v. Information which is expressed to be given to Councillors and Council officers in confidence is intended to be confidential;
  - vi. Information which is not expressly declared to be confidential but which contains information about the personal affairs of any party or is information which could result in any action being taken against Council for defamation is intended to be confidential;
  - vii. Legal advice given to Council is presumed to be confidential unless or until Council or the Chief Executive Officer declares it not to be confidential;
  - viii. Any document marked 'confidential' is intended to be and should be treated as confidential.
- c) Without in any way affecting the application of the Act, this policy deems that the requirements (but not the penalty) of section 77 of the Act shall, for all intents and purposes, and for the application of this policy, extend to staff.

This policy deems that if a person has any doubt as to whether Council intends to keep information confidential, it is preferable to act on the assumption that Council does so intend until the doubt is resolved at a subsequent meeting of Council.

### 4.2 Confidential Information derived from outside the Council

Examples include but are not limited to:

- Commercial in confidence information provided by contractors or tenderers, joint venture partners and wholly owned subsidiaries of Council;
- Confidential information from Government departments or Ministers;
- Financial and legal opinion/analysis where the disclosure of that information may prejudice the Council's position or that of a third party; and
- Information presented to Councillors at meetings outside of formal Council meetings.

This confidential information shall not be disclosed to any third party without the Council's or the CEO's consent.

It should not be incorporated in the agenda of any Council meeting (except by reference) unless in the agenda of a closed ('In-Camera') meeting of Council or at the CEO's direction otherwise.

It is a matter for Council (or a special committee) as to whether or not to resolve to close a meeting to the public if the meeting is discussing any of the matters set out in section 89(2) of the Act.

## 5. Responsibility /Accountability

<b>5.1</b>	<b>Manager Legal and Governance (Privacy Officer)</b> <ul style="list-style-type: none"> <li>To provide advice on privacy issues to the organisation.</li> </ul>
<b>5.2</b>	<b>All Council Officers and Councillors</b> <ul style="list-style-type: none"> <li>Council Officers and Councillors are responsible for compliance with the requirements of this policy. Non compliance may result in penalties and/or criminal charges.</li> </ul>

## 6. References and links to legislation and other documents

Name	Location
<i>Local Government Act 1989</i>	<a href="http://www.legislation.vic.gov.au">www.legislation.vic.gov.au</a>
<i>Privacy and Data Protection Act 2014</i>	<a href="http://www.legislation.vic.gov.au">www.legislation.vic.gov.au</a>
Code of Conduct - Councillor	Policy and Procedures Intranet <a href="http://www.melton.vic.gov.au">www.melton.vic.gov.au</a>
Code of Conduct - Employee	Policy and Procedures Intranet <a href="http://www.melton.vic.gov.au">www.melton.vic.gov.au</a>