

CONFIDENTIALITY POLICY

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Responsible Officer:	Chief Executive Officer
Department:	Executive Office

Version	Decision Number or CEO Approval	Decision Date	History
1	Approved	15 December 2020	Review December 2023
2	Approved	27 May 2024	Review May 2027

1. BACKGROUND

This policy aims to assist the Goondiwindi Regional Council (“Council”) Councillors, Council employees and other Council representatives in determining what might be considered confidential information and how this information is to be handled in accordance with the *Local Government Act (Qld) 2009* (“the LGA”).

The 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 or such release is prevented by legislation.

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 Council.

It is accepted that Councillors, Council employees and other Council representatives will be in receipt of confidential information. 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. SCOPE

This policy applies to all representatives of Council.

For the purpose of this policy, “Council representatives” includes persons who are or who have been:

- a Councillor;
- a Council employee;
- Contract employee, supplier or volunteer of Council.

This policy applies to confidential information Council representatives have acquired whilst engaged by (or duly elected by) Council.

3. PURPOSE

This policy aims to:

- Support Councillors, Council employees and other Council representatives 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;
- Assist Council in determining what is considered to be confidential information and how this information should be handled;
- Provide guidance to Councillors in complying with section 171 of the LGA;
- Provide guidelines relating to the management of confidential and sensitive information in respect to Council reports; communication with Councillors, Council employees and members of the public; and provide guidance to Council employees in complying with section 200 of the LGA.

This Policy does not override an individual Councillor's or Council employee's statutory obligations in respect of the use of information, nor does it override Council's obligations under the LGA, *Information Privacy Act 2009* or any other legislation or subordinate legislation to disclose or publish information where this is required by law.

3.1. RESPONSIBILITIES

Councillors, Council employees and other Council representatives agree that they should:

- Exercise due care when handling or using information acquired in their role;
- Acknowledge that there will be information that must be treated as confidential, because to release it would prejudice public trust and confidence in the integrity of Council;
- Acknowledge that disclosure of confidential information constitutes a breach of the LGA and that Council may take disciplinary action for any damages caused;
- If uncertain, presume information is confidential and seek advice from the Council CEO ("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;
- Not use confidential information to gain improper advantage for themselves or any other person or body; and
- Not use confidential information to cause harm or detriment to Council or any other person or body.

3.2. CONFIDENTIAL INFORMATION

The following types of information shall be deemed 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 has been classified as confidential by the Department or a Minister;
- Information of a personal nature or about personal affairs, for example the personal details of Councillors or Council employees;
- 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 Council employees in confidence;

- Information examined or discussed at Councillor Workshops or briefing sessions, unless the CEO declares that such information (or part thereof) is not confidential.
- Information about:
 - The appointment, dismissal or discipline of Council employees;
 - Industrial matters affecting Council employees;
 - 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 (Qld) 2009* or the *Planning Act (Qld) 2016*, including deciding applications made to it under those Acts.

It is acknowledged that some of the above types of information may need to be disclosed from time to time for legal proceedings or in accordance with the *Right to Information Act (Qld) 2009* or *Information Privacy Act (Qld) 2009*.

When a third party is requesting access to Council records, the Councillor and/or Council employee is to assume that all information produced, managed by or given to the Council is assumed to be confidential. Access can only be provided to third parties under the relevant legislative, local law, policy and administrative access. In addition, where there is a dispute and/or confusion about access, the external party has a legal right to apply under the *Right to Information Act (Qld) 2009* or *Information Privacy Act (Qld) 2009* to access and this application would be assessed on its merits.

The Council ensures that privacy and confidentiality of information it holds and takes all reasonable precautions to ensure that personal information (about individuals), commercial-in-confidence information (about organisations), or other sensitive information is not misused, intentionally or unintentionally, either within the Council or shared with third parties.

All personal information collected, stored and handled by Council shall be done so in compliance with the Queensland Information Privacy Principles. Refer to Council's "Information Privacy Policy" for further information in this regard.

3.3. CONFIDENTIAL INFORMATION AT COUNCIL MEETINGS

Closed Session Reports

Under section 254J of the *Local Government Regulation (Qld) 2012*, Council may resolve that a meeting be closed to the public if its Councillors or members consider it necessary to close the meeting to discuss:

- The appointment, dismissal or discipline of employees; or
- Industrial matters affecting employees; or
- Rating concessions; or
- Contracts proposed to be made by it; or
- Starting or defending legal proceedings involving the Council; or
- Any action to be taken by the Council under the *Sustainable Planning Act (Qld) 2009* or the *Planning Act (Qld) 2016*, including deciding applications made to it under those Acts; or
- 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.

The CEO has the responsibility of preparing the agenda for a Council meeting. In doing that the agenda will indicate items in open and closed session. A resolution that a meeting be closed must state the nature of the matters to be considered while the meeting is closed and the resolution (other than a procedural resolution) must not be made in a closed meeting.

Whilst the resolution arising from such matters must be considered in Open Session, Council has the option to make any reports or material prepared about a closed session matter only available

under the provisions of the *Right to Information Act (Qld) 2009*, the *Information Privacy Act (Qld) 2009* or legal proceedings.

Should it be determined that the report should remain a confidential document then the wording of the resolution must not refer to the subject report.

Nevertheless, this policy deems that as a minimum:

- The CEO may make a declaration that information concerning a specific matter is to be treated as confidential to Council and the information will remain confidential unless or until Council resolves to the contrary;
- An item on a Council meeting agenda, including the information contained in the documentation or supporting material, that is declared confidential by the CEO is to remain confidential unless or until the Council resolves to the contrary;
- If the Mayor or a Councillor in a meeting asks that a matter be treated as confidential, Council will formally resolve as to whether all information concerning the matter is confidential;
- If Council exercises its powers under section 254J of the *Local Government Regulation (Qld) 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, unless and until Council resolves to the contrary;
- Confidential information will be clearly identified, where possible, as 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; or
- 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 Council meeting.

3.4. RESPONSIBILITIES OF COUNCILLORS AND COUNCIL EMPLOYEES

Councillors and staff must make themselves aware of the types of information Council deems to be confidential and the personal responsibilities they have to ensuring there is no disclosure of this information:

- 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 LGA and this policy, and that the individual could face personal liability for damages caused to third parties;
- 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.

3.5. USE OF INFORMATION BY COUNCILLORS

Councillors must handle information in a way that promotes and maintains the public's trust and confidence in the integrity of the Council. Improper release of Council information by a Councillor is a breach of section 171 of the LGA.

A breach of section 171(3) of the LGA includes a release such as:

- Orally telling any person about the information or any part of the information;
- Providing the original or a copy of documentation or any part of the documentation that is marked confidential; or
- Paraphrasing any confidential information and providing that in writing or orally.

A person may make a complaint about a breach by a Councillor of section 171(3) by giving notice of the complaint to the CEO. A breach of section 171(3) is “misconduct.” Allegations of misconduct must be referred by the CEO to the Department of Infrastructure, Local Government and Planning.

3.6. USE OF INFORMATION BY COUNCIL EMPLOYEES

Section 200 of the LGA states, amongst other things that 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 is confidential to the local government; and the local government wishes to keep confidential.

Any release of confidential information for any purpose to any person or organisation (other than to those who are entitled to the information) is a breach of section 200 of the LGA. Release of information includes:

- Orally telling any person about the information or any part of the information;
- Providing the original or a copy of documentation or any part of the documentation that is marked confidential; or
- Paraphrasing any confidential information and providing that in writing or orally.

4. DEFINITIONS

N/A

5. REVIEW DATE

May 2027

6. RELATED DOCUMENTS

- *The Local Government Act (Qld) 2009*
- *The Local Government Regulation (Qld) 2012*
- *The Information Privacy Act (Qld) 2009*
- *The Right to Information Act (Qld) 2009*
- Council’s Information Privacy Policy
- *The Sustainable Planning Act (Qld) 2009*
- *The Planning Act (Qld) 2016*

7. ATTACHMENTS

N/A