

COUNCIL POLICY

Council Policy Title:	Confidential Information
Council Policy ref. no:	2.4
Responsible Department:	Corporate and Community Services
Date of adoption/review:	24 July 2013

1. INTRODUCTION

This policy provides guidance to Councillors, members of Special Committees and Officers in complying with sections 76B, 77 and 89 of the *Local Government Act 1989* (the Act) relative to the use of the information which is available to the Council on a confidential basis and to assist Council in determining which matters may be considered in closed session pursuant to section 89 of the Act.

This policy applies to information to be considered at “closed” meetings of Council, Special Committees and Advisory Committees or is provided to Councillors or Officers on a confidential basis.

2. DEFINITIONS

2.1 “Information” includes letters, reports, documents, facsimiles, attachments, tapes or electronic media and/or other forms of information including verbal.

2.2 Section 89(2) of the Act specifies that a Council or Special Committee may resolve that the meeting be closed to members of the public if the meeting is discussing any of the following –

- (a) *personnel matters;*
- (b) *the personal hardship of any resident or ratepayer;*
- (c) *industrial matters;*
- (d) *contractual matters;*
- (e) *proposed developments;*
- (f) *legal advice;*
- (g) *matters affecting the security of Council property;*
- (h) *any other matter which the Council or Special Committee considers would prejudice the Council or any person;*
- (i) *a resolution to close the meeting to members of the public.*

- 2.3 Section 77(2) of the Act specifies that information is to be considered “confidential” if any of the following circumstances exist:
- (2) For the purposes of this section, information is “confidential information” if –
- (a) the information was provided to the Council or a special committee in relation to a matter considered by the council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (c) subject to sub-section (3), the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) of the Act and the Council has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in sub-section (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made unless sub-section (2)(a) or (2)(b) applies to the information.
- 2.4 Information designated “confidential information” under any of the above circumstances, ceases to be confidential if Council resolves that the information is not confidential.
- 2.5 Confidential information may be derived from:
- (a) Reports presented to Council or a Committee of Council.
 - (b) Commercial in confidence information provided by a third party, contractors or tenderers, joint venture partners and wholly owned subsidiaries of Council.
 - (c) Government Departments or Ministers.
 - (d) Financial and legal analysis.

3. POLICY

- 3.1 Council operates in an environment of public accountability and scrutiny in which it seeks to inform the public of issues under consideration and the nature of decisions made by Council and its Committees.
- 3.2 Whilst endeavouring to minimise the number of matters which are to be considered in confidential session, Council acknowledges that certain matters ought properly be considered in closed meetings.
- 3.3 A Councillor’s right and duty to be informed and to inform and consult with constituents about the business before Council needs to be balanced with the interest the Council has in preventing the disclosure or premature disclosure of confidential information.

- 3.4 This policy does not override an individual Councillor's statutory obligations in respect of the use of information and the necessity of disclosing any direct or indirect pecuniary interest in a matter under consideration by Council or a Committee in accordance with sections 77 and 79 of the Act.
- 3.5 This policy does not override the Council's obligations under the Act or any other legislation or subordinate legislation to disclose or publish information required by law to be disclosed or published. Confidential information shall not be disclosed to any third party without Council's consent or in accordance with any statement or embargo contained within the subject document.
- 3.6 The status of confidentiality shall be set out in each Council report or on the front page of each document which is categorised as confidential.
- 3.7 At each Council-In-Committee meeting a standing item of business be included, which lists all documents that have been described as confidential by the Chief Executive Officer since the last report to Council In-Committee as per 3.3.
- 3.8 Prior to consideration of any confidential information, Council or a Special Committee must resolve to close the meeting to members of the public.
- 3.9 Confidential information shall not be incorporated in an agenda or minutes of any Council or Council Committee meetings except by reference unless in the agenda or minutes of a closed meeting of the Council or Committee pursuant to section 89 of the Act.
- 3.10 A confidential minute book shall be maintained for any matters considered by Council or a Council committee in accordance with section 89 of the Act.
- 3.11 Unless otherwise endorsed, information contained within the confidential sessions of Council or a Council committee shall remain confidential indefinitely.
- 3.12 Care must be exercised where the disclosure of information, not specifically identified as confidential, may prejudice the Council or other parties.
- 3.13 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.
- 3.14 Councillors shall not make improper use of information or breach confidentiality in relation to documents to which they have access. section 77 of the Act makes it unlawful for a Councillor or a former Councillor to release information that the person knows or should reasonably know, is confidential information.

4. IMPLEMENTATION AND REVIEW

This policy will be implemented by Councillors and staff of the Colac Otway Shire and is subject to periodic review.

5. REFERENCES

- Colac Otway Shire Council Code of Conduct
- Local Government Act 1989
- Freedom of Information Act 1982
- Information Privacy Act 2000

ADOPTED/AMENDMENT OF POLICY

Policy Review Date	Reason for Amendment
24 May 2006	Adopted by Council
28 October 2010	Review
24 July 2013	Review