



# **Councillors' Access to Information and Their Interaction with Staff Policy**

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## 1 Objectives

The objectives of this Policy are to:

1. provide a documented process on how Councillors can access Council information and how Councillors and staff should interact,
2. ensure Councillors have access to all information necessary for them to exercise their statutory role as a member of the governing body of the Council,
3. ensure that Councillors receive advice to help them in the performance of their civic duty in an orderly and regulated manner,
4. provide direction on Councillor's rights of access to Council buildings.

## 2 Aims

The *Local Government Act* provides distinctly different roles for Councillors and Council staff.

The *Local Government Act* requires that councillors as a group direct and control the Council's affairs, allocate resources, determine policy, and monitor its performance. As individuals, councillors also communicate Council policy and decisions to the community, exercise community leadership and represent the views of residents and ratepayers to Council. A Councillor's role extends beyond attendance at formal meetings of Council.

The *Local Government Act* makes it clear that the General Manager is responsible for the day to day operations of the Council.

Councillors have a right to access Council information that is reasonably necessary for exercising the functions of civic office, including those roles outlined above which extend beyond decision making at formal meetings. However, this is counterbalanced by the obligation to use this information appropriately and to maintain the integrity and security of confidential information.

The separation of responsibilities, accountability and role structure of the Councillors and staff is further detailed in Annexure 1 of the Policy.

The aim of the Policy is to promote a positive working relationship between Councillors as the elected people of the community and the staff employed to administer the operations of Council.

The Policy will help Councillors and staff understand their respective roles and how they should operate, in order to perform their role effectively. The Policy does not restrict Councillors' legal rights to access staff and information and does not limit any statutory and common law rights Councillors have to access information.

### 3 Councillor Access to Information

Councillors' rights to access information includes the statutory provisions of Council's Code of Conduct, the Government Information (Public Access) Act and the policy provisions contained within this Policy.

#### Code of Conduct provisions

Councillor access to information and the use of information is contained in Part 7 of the Code of Conduct, which provides:

#### Councillor and administrator access to information

- The general manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under the Government Information (Public Access) Act 2009. **(clause 7.1)**
- The general manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions. **(clause 7.2)**
- Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedures. **(clause 7.3)**
- Members of staff of council who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it and in accordance with council procedures. **(clause 7.4)**
- Councillors and administrators who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public. **(clause 7.5)**

#### Refusal of access to documents

- Where the general manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty **(see clause 7.2)**. The general manager or public officer must state the reasons for the decision if access is refused. **(clause 7.7)**

#### Use of certain council information

- In regard to information obtained in your capacity as a council official, you must:
  - a. only access council information needed for council business
  - b. not use that council information for private purposes

- c. not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council
- d. only release council information in accordance with established council policies and procedures and in compliance with relevant legislation. **(clause 7.8)**

#### Use and security of confidential information

- You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible. **(clause 7.9)**
- In addition to your general obligations relating to the use of council information, you must:
  - a. protect confidential information
  - b. only release confidential information if you have authority to do so
  - c. only use confidential information for the purpose it is intended to be used
  - d. not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
  - e. not use confidential information with the intention to cause harm or detriment to your council or any other person or body
  - f. not disclose any information discussed during a confidential session of a council meeting. **(clause 7.10)**

#### Personal information

- When dealing with personal information you must comply with:
  - a. the *Privacy and Personal Information Protection Act 1998*
  - b. the *Health Records and Information Privacy Act 2002*
  - c. the Information Protection Principles and Health Privacy Principles
  - d. council's privacy management plan
  - e. the Privacy Code of Practice for Local Government **(clause 7.11)**

#### Government Information (Public Access) Act provisions

Section 6 requires Council to provide access to certain information (open access information) free of charge to all members of the public. This information is available on Council's website or, where Council has not been able to include the information on Council's website, by request.

Section 7 allows Council to provide access to other information unless there is an overriding public interest against disclosure of the information. For example, there may be occasions where the release of personal information or information identifying a person would be contrary to the *Privacy and Personal Information Protection Act*.

## Council Policy provisions

Councillor access to information is to be provided in accordance with this Policy to ensure that access to information is obtained in ways that are legal and appropriate.

The following Policy applies for Councillors requesting access to information:

- Councillors can request the General Manager, Public Officer or a staff member nominated by the General Manager to provide access to a particular Council record.
- Councillors can request access to information relating to a matter on a meeting agenda from the General Manager, Director, Manager or Team Leader responsible for the meeting report.
- Councillors cannot request access to information from staff members below the level of Team Leader.
- Councillors who have a personal (as distinct from civic) interest in the information of Council only has the same rights of access as any other person.
- Councillors are entitled to access all Council information identified in the *Government Information (Public Access) Act* as open access information.
- If a Councillor is refused access to information by the General Manager, the Councillor can request access to the information by submission of a Notice of Motion to a Council Meeting. Councillors must not release personal information about a third party except in accordance with the provisions of the *Privacy and Personal Information Protection Act*.
- Councillors must not release health information about a third party except in accordance with the provisions of the *Health Records and Information Privacy Act*.

## 4 Councillor and staff interaction

Councillors rights to access and their responsibilities for interaction with Council staff includes the statutory provisions of Council's Code of Conduct, the Local Government Act and the policy provisions contained within this Policy.

### Code of Conduct provisions

Councillor interaction with staff is contained in Part 6 of the Code of Conduct, which provides:

#### Obligations of Councillors and Administrators

Each council is a body politic. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to workforce policy. (Clause 6.1)

Councillors or Administrators must not:

- direct council staff other than by giving appropriate direction to the general manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (*section 352*)
- in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (Schedule 6A of the Act)
- contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the general manager
- contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors or the Chair of council's audit committee who may be provided with any information by individual councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions. (**Clause 6.2**)

#### Obligations of staff

The general manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay. (**Clause 6.3**)

Members of staff of council must:

- a) give their attention to the business of council while on duty
- b) ensure that their work is carried out efficiently, economically and effectively
- c) carry out lawful directions given by any person having authority to give such directions
- d) give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them



- e) ensure that any participation in political activities outside the service of the council does not conflict with the performance of their official duties. **(Clause 6.4)**

#### Obligations during meetings

You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings. **(Clause 6.5)**

You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council. **(Clause 6.6)**

#### Inappropriate interactions

You must not engage in any of the following inappropriate interactions:

- a. Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues.
- b. Council staff approaching councillors and administrators to discuss individual or operational staff matters other than broader workforce policy issues.
- c. Council staff refusing to give information that is available to other councillors to a particular councillor.
- d. Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council. Councillors and administrators being overbearing or threatening to council staff.
- d. Councillors and administrators making personal attacks on council staff in a public forum. Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
- e. Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
- f. Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
- g. Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act. **(Clause 6.7)**



## Local Government Act Provisions

Councillors must, in their dealings with staff members have regard to the provisions of the *Local Government Act*, specifically:

### Section 223 relating to the role of Council

Section 223 states:

223 What is the role of the governing body?

The role of the governing body is to direct and control the affairs of the council in accordance with this Act.

### Section 226 relating to the role of the Mayor

Section 226 states:

226 What is the role of the mayor?

The role of the mayor is:

- to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- to exercise such other functions of the council as the council determines
- to preside at meetings of the council
- to carry out the civic and ceremonial functions of the mayoral office.

### Section 232(1) relating to the role of a Councillor as a member of the governing body of the Council

Section 232(1) states:

232 What is the role of a councillor?

(1) The role of a councillor is, as a member of the governing body of the council:

- to provide a civic leadership role in guiding the development of the community strategic plan for the area and to be responsible for monitoring the implementation of the council's delivery program
- to direct and control the affairs of the council in accordance with this Act
- to participate in the optimum allocation of the council's resources for the benefit of the area to play a key role in the creation and review of the council's policies and objectives and criteria relating to the exercise of the council's regulatory functions
- to review the performance of the council and its delivery of services, and the delivery program and revenue policies of the council.

### Section 335 relating to the functions of the General Manager

Section 335 states:

335 Functions of general manager

(1) The general manager is generally responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation, without undue delay, of decisions of the council.

(2) The general manager has the following particular functions:

- to assist the council in connection with the development and implementation of the community strategic plan and the council's resourcing strategy, delivery program and operational plan and the preparation of its annual report and state of the environment report the day-to-day management of the council
- to exercise such of the functions of the council as are delegated by the council to the general manager
- to appoint staff in accordance with an organisation structure and resources approved by the council
- to direct and dismiss staff
- to implement the council's equal employment opportunity management plan.

(3) The general manager has such other functions as may be conferred or imposed on the general manager by or under this or any other Act.

Councillors must respect the functions, responsibilities and workload of individual staff members. They must comply with the proper and reasonable practices and procedures of the organisation and Councillors who are Committee Chairs may seek information from the relevant Director, Manager or Team Leader regarding matters on their Committee Business Agenda.

### Council Policy provisions

Council's Policy is that the following interactions are inappropriate:

- Councillors approaching staff members below the level of Team Leader.
- Staff approaching Councillors on political issues.
- Councillors approaching staff outside the Council building or outside office hours to discuss Council business.
- Councillors requesting staff to undertake work of a personal nature for them or any other person.

## 5 Councillor Access to Council buildings

Councillors rights to access Council buildings includes the statutory provisions of Council's Code of Conduct and the policy provisions contained within this Policy.

### Code of Conduct provisions

Councillor access to Council buildings is contained in Part 7 of the Code of Conduct, which provides:

#### Councillor access to council buildings

Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the general manager. **(Clause 7.20)**

Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff. **(Clause 7.21)**

Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions. **(Clause 7.22)**

### Council Policy provisions

The following Policy applies for Councillors access to Council building:

- Councillors not in pursuit of their civic duties only have the same rights of access to Council buildings and premises as any other member of the public.
- A Councillor has no rights to enter staff only areas (Code of Conduct clause 7.21) however the General Manager may agree to waive this restriction.
- Access to the Mayor's Office is permitted only with approval of the Mayor.

## 6 Reporting Breaches of the Policy

All occasions of a Councillor or staff member not complying with this Policy should be immediately reported to the General Manager. Reports relating to the General Manager should be made to the Mayor. Where the report, other than a report relating to a breach of the Code of Conduct, relates to the conduct of a Councillor, the General Manager shall immediately report the matter to the Mayor. Where the report, other than a report relating to a breach of the Code of Conduct, relates to the conduct of a member of staff, the General Manager shall deal with the matter according to the terms and conditions of employment of the staff member.

If the report relates to a breach of the Code of Conduct provisions, the matter is to be dealt with under the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*.

## 7 Status of the Policy

Policy Version: 2

This Policy was adopted by Council on 18 February 2013.

## 8 Annexure

1. Separation of responsibilities, accountability and role structure of Councillors and staff ('Accountability & Role Structure')

End of Policy



# Accountability & Role Structure

(provides a summary of various Roles, Accountabilities and Relevant extracts from the Local Government Act 1993)

