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# **CONFIDENTIALITY POLICY: HANDLING OF CONFIDENTIAL INFORMATION BY COUNCILLORS**

**(Adopted by Council and  
effective on 18 April 2016)**

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This policy was adopted by resolution of Darebin City Council on 18 April 2016 and is effective from that date.

<b>Version</b>	<b>Date Adopted by Council</b>	<b>Amendment</b>
1.0	18 April 2016	Initial version

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## 1. Purpose of the Policy

- 1.1 The purpose of the Confidentiality Policy – Handling of Confidential Information by Councillors (**Policy**) is to:
- 1.1.1 Outline the types of confidential information that Councillors will have access to;
  - 1.1.2 Establish the processes to be adopted by Council when Councillors are given access to confidential information; and
  - 1.1.3 State Council's expectations of a Councillor who is given access to confidential information.
- 1.2 By complying with this Policy, it is expected that Councillors will avoid any appearance that they have disclosed or used confidential information without lawful authority.

## 2. Scope

- 2.1 The Policy applies to all Councillors and operates in conjunction with the *Local Government Act 1989 (Act)* and Council's Councillor Code of Conduct (**Code**).
- 2.2 The Policy is not intended to replicate or replace the obligations imposed on Councillors under the Act and the Code. Rather, it is intended to complement and clarify them.
- 2.3 The term 'confidential information' also includes such terminology as 'In Confidence' and 'Privileged Information' and is used in this Policy to refer to information that is classified as being confidential in accordance with s 77(2) of the Act.
- 2.4 Notwithstanding any clause contained in this Policy, the Mayor or Chief Executive may deem information to be 'confidential information' which must be treated in accordance with the requirements of this Policy.

## 3. Background

- 3.1 Section 77(1) of the Act provides:

*A person who is, or has been, a Councillor or a member of a special committee, must not disclose information that the person knows, or should reasonably know, is confidential information.*

Penalty: 120 penalty units.

- 3.2 Section 77(1A) of the Act provides:

*A person who is, or has been, a Councillor or a member of a special committee, may disclose information that the person knows is confidential information in the following circumstances:*

- (a) *for the purpose of any legal proceedings arising out of this Act;*
- (b) *to a court or tribunal in the course of legal proceedings;*
- (c) *to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;*

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- (d) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
  - (e) to a municipal monitor to the extent reasonably required by the municipal monitor;
  - (f) to the extent reasonably required for any other law enforcement purposes.

3.3 Section 77(2) of the Act prescribes what information constitutes confidential information, and provides:

*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) *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) and the Council has not passed a resolution that the information is not confidential.*

#### 4. Confidential Information

4.1 All confidential information provided to Councillors electronically will:

- 4.1.1 Be marked with a heading and watermark on each page stating 'CONFIDENTIAL';
- 4.1.2 Be attached to an email with the words 'CONFIDENTIAL' in the subject heading; and
- 4.1.3 Carry the following statement:

*This email and the information attached to it are CONFIDENTIAL and are provided to you for the purpose of fulfilling your functions as a Councillor. This email and the information attached to it are not to be further distributed and their content is not to be discussed with, or disclosed to, anyone other than your fellow Councillors and members of Council staff who are directly involved in their preparation and distribution.*

4.2 Confidential reports and agendas provided to Councillors in hard copy will be:

- 4.2.1 Printed on green paper and marked with a heading and watermark on each page stating 'CONFIDENTIAL'.
- 4.2.2 Individually marked on the front page with the name of the Councillor to whom it is handed.

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4.2.3 Handed to Councillors at a time deemed suitable by the member of Council staff distributing the information; or

4.2.4 Sealed in an envelope marked 'CONFIDENTIAL' and placed in Councillors individual pigeon holes for collection.

All confidential information will be collected from each Councillor at the completion of the scheduled meeting or briefing.

4.3 Confidential minutes of meetings will be provided to Councillors in PDF format via email in accordance with 4.1 above.

4.4 A register of confidential information provided to Councillors will be kept, which will record:

4.4.1 A brief description of the confidential information provided to Councillors;

4.4.2 The date and manner in which the confidential information was provided to Councillors;

4.4.3 In the case of hard copy confidential information, the name(s) of any Councillor(s) who did not return the confidential information when it was collected.

## **5. Custody of Confidential Information**

5.1 Councillors must exercise extreme care when handling confidential information to ensure that it is not disclosed, deliberately or accidentally, to any other person who has not lawfully been given access to the information.

5.2 Councillors must ensure that electronic and hard copy confidential information in their possession is stored in a secure manner so that it cannot be accessed by any other person who has not lawfully been given access to that information.

5.3 Councillors must only seek to access confidential information for purposes necessary for the fulfilment of their functions as Councillors.

## **6. Disclosure or Use of Confidential Information**

6.1 The disclosure or use of confidential information includes:

6.1.1 Verbally telling another person who has not lawfully been given access to the information about the information or any part of the information;

6.1.2 Allowing another person who has not lawfully been given access to the information to see the original confidential information;

6.1.3 Providing a copy of the confidential information to another person who has not lawfully been given access to the information;

6.1.4 Paraphrasing, either in writing or verbally, the confidential information and providing that to a person who has not lawfully been given access to the information.

6.2 A Councillor who discloses or uses confidential information without lawful authority risks:

6.2.1 Committing a criminal offence against s 77(1) of the Act;

6.2.2 Committing a criminal offence against s 76D of the Act; and

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6.2.3 Civil liability in an action for breach of confidentiality.

## **7. Action on Disclosure or Use of Confidential Information**

7.1 If a Councillor or a member of Council staff suspects that a Councillor has disclosed or used confidential information without lawful authority:

7.1.1 The allegation will be reported in writing (eg via email) to Council's Chief Executive Officer;

7.1.2 Unless Council's Chief Executive Officer forms the view that the allegation is:

(a) lacking in substance;

(b) frivolous or vexatious; or

(c) is of a minor nature that can be resolved without formal intervention,

Council's Chief Executive Officer will, as soon as practicable after receiving the allegation, refer it to the Local Government Investigations and Compliance Inspectorate;

7.1.3 Council's Chief Executive Officer will, within 7 days of referring the allegation to the Local Government Investigations and Compliance Inspectorate, advise the Councillor the subject of the allegation that it has been so referred; and

7.1.4 Council's Chief Executive Officer is not required to advise the Councillor the subject of the allegation of any other details of it, including details of the person who made it.

7.2 The Councillor or member of Council staff who makes an allegation is not entitled to be advised of any referral to the Local Government Investigations and Compliance Inspectorate but Council's Chief Executive Officer may choose to do so.

7.3 Nothing in this Policy is intended to prevent a Councillor or member of Council staff who suspects that a Councillor has disclosed or used confidential information without lawful authority from reporting such an allegation directly to the Local Government Investigations and Compliance Inspectorate and not to Council's Chief Executive Officer.

## **8. Review**

This Policy will be reviewed in April 2017, unless Council's Chief Executive Officer determines that it should be reviewed sooner.

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