

Shire of Mundaring

POLICY

ACCESS BY COUNCIL AND COMMITTEE MEMBERS TO INFORMATION

Policy Ref: OR-07

Committee Rec:

Date:

Adopted by: C10.05.09

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Procedure Ref:

Delegation Ref:

Statute Ref: *Local Government Act 1995*

Freedom of Information Act 1992

Local Law Ref: N/A

PURPOSE

To provide guidance relating to the right of access to Council and Committee Members to any information held by the Shire of Mundaring that is relevant to the performance of their functions and to affirm the Shire of Mundaring's position concerning the use and distribution of confidential information, particularly having regard to the maintenance of the individual's right to privacy and preservation of the integrity of the deliberative process.

Definitions

"Act" means – *Local Government Act 1995*

"CEO" means – Chief Executive Officer

"Confidential Information" means – Information as detailed in Attachment 1

Background

Section 5.92 of the *Local Government Act 1995* (the Act) gives a right of access to Council and Committee Members to any information held by the local government that is relevant to the performance of their functions (refer to Attachment 2).

The Policy does not affect any right of access to information under the *Freedom of Information Act 1992*.

General Principles

In addressing the provisions of s5.92, this Policy reflects the following broad principles which may be applied in interpreting the Policy:

- a) Requests for information by Council or Committee Members should be made directly to the Chief Executive Officer (CEO) in the case of current matters and through the Shire President to the CEO in other cases.
- b) There should be ready access to information relevant to current matters and information covered by s5.94 of the Act (refer to Attachment 2).
- c) A request for information relevant to non-current matters should be complied with if it is reasonable and the CEO has no good reason for refusal.
- d) The CEO may impose conditions as to the use of information supplied or as to access to or custody of documents provided in response to a request.
- e) A member denied access to information that is not considered "confidential information" by a decision of the CEO or the Shire President, or who is dissatisfied with a condition imposed by the CEO as to use of any information or access to or custody of any document, may seek a Council determination on the issue.
- f) In ordinary circumstances, access to information should not be given to a Council or Committee Member who appears to have a financial interest in that matter or an impartiality interest, beyond the information that would ordinarily be made available to a person under s5.94 of the Act.

Policy

1. Request for Current Information
 - 1.1 A request by any Council or Committee Member for access to information that is relevant to a matter currently before the Council or a Committee or likely to come before the Council or a Committee in the future ("current information") should be directed in the first instance to the CEO.
2. Access to Current Information that is not classified as "confidential".

Council Members

- 2.1 The CEO should provide to any Council Member access to all current information.
- 2.2 Without limiting the generality of the foregoing, the access referred to in the preceding paragraph includes access by Council Members to all written contracts entered into by the Shire and all documents relating to written contracts proposed to be entered into by the Shire.

Committee Members

- 2.3 The CEO should provide to any Committee Member access to all information that is relevant to a matter currently before that Committee, but not including information referred to in 2.2 above unless:
- a) the member requesting is a Council Member; or
 - b) the CEO considers access to the information is appropriate.
- 2.4 As a general principle the CEO should not refuse access under this Policy to any information to which the public may have access under s5.94 of the Act.
- 2.5 Where access to information should be given under the preceding paragraphs, the CEO should provide a copy of any requested information or documentation if practicable to do so.
3. Access to Confidential Information
- 3.1 The CEO has full discretion whether or not to provide each member of the Council or Committee with a written copy of confidential information, notwithstanding a Councillor's or Committee member's right of access to inspect confidential information.
- 3.2 Where the CEO considers in certain circumstances that the distribution of particular written confidential information would be inappropriate then the CEO shall ensure that such confidential information shall be available for viewing by each member of the Council and at a place nominated by the CEO during office hours in the two days immediately prior to the commencement of the meeting at which the confidential information will be considered at the meeting itself.
- 3.3 The CEO may also make alternative arrangements with a particular member or members concerning the time and place at which confidential information may be viewed. In particular, written copies of legal advice obtained for and on behalf of the Shire shall not be provided to members of the Council or Committee as a matter of course. However, the CEO will ensure that all legal advice concerning a matter or matters to be considered at a meeting of the Council or Committee shall be available for viewing by each member of the Council in the manner prescribed in the preceding paragraph.
4. Referral of Requests to Shire President and Council
- 4.1 a) Any Council or Committee Member whose request for current information is refused by the CEO may refer the request to the Shire President who should receive it as a request under this clause.

- b) Any Council or Committee Member who seeks access to any information that is in the possession of the Shire but that is not current information, should refer the request to the Shire President in the first instance, together with a brief written explanation of the reasons for seeking the information.
 - c) The Shire President has responsibility for any necessary liaison with the CEO in regard to a request under (a) or (b) above.
- 4.2 If the Shire President considers that a request by a Council or Committee Member for access to information referred to the Shire President under the preceding clause is reasonable, the Shire President should pass on that request to the CEO together with the member's written reason in the case of a request for non current information.
- 4.3 The CEO should comply with a request received pursuant to clause of this Policy unless:
- a) in the opinion of the CEO, compliance with the request would divert a substantial and unreasonable portion of the Shire's resources away from its other functions;
 - b) in the opinion of the CEO there is any other reason for refusing compliance; or
 - c) the information is deemed as "classified" or "personal" information.
- 4.4 Where there is refusal by the CEO under clause 4.3, the CEO is to give that response to the Shire President with a written explanation of the reasons for refusal.
- 4.5 Where any request for information referred by the Shire President to the CEO under the preceding clauses of this Part 4 of this Policy is refused by the CEO, and if the Council or Committee Member requesting the information (including the Shire President) is not satisfied with the CEO's reasons for refusal, and if the Shire President considers it appropriate to do so, the Shire President should cause the issue to be brought before the Council at the next Ordinary Meeting for the Council or at a Special Meeting of the Council called for the purpose in accordance with the Act and the Standing Orders.

To enable the Council to review the decision made by the CEO, the Shire President should provide to the Council the member's written reasons for requesting the information (in the case of no current information) and the CEO's written reasons for refusal.

- 4.6 If a Council Member who has sought access to information through the Shire President is not satisfied either:
- a) with a refusal by the Shire President to refer the matter to the CEO; or
 - b) with reasons for refusal given by the CEO to the Shire President and a refusal by the Shire President to refer the matter to the Council,

the Council Member may give notice of the matter to be brought forward as an item of business at the next ordinary Meeting of the Council, or by bringing the matter forward in accordance with the provisions of the Act and the Standing Orders at a Special Meeting of the Council. In that case, the Council Member's written reasons for seeking the information, the CEO's written reasons for refusal (if applicable), and any written explanation given by the Shire President for any decision made by the Shire President, should be provided to the Council.

The provisions in this clause do not apply to a Committee Member who is not a Council Member.

- 4.7 In forming an opinion upon or determining any question relating to access to information under this Part 4, the Shire President, the CEO and the Council respectively are to apply the principle that a Council or Committee Member should not be denied access to any information held by the Shire if it is clear that the information is relevant to the performance by the Member of any of the Member's functions under the Act or under any other written law.

5. Copies to Other Members

- 5.1 Where a copy of information is given to a Council Member who requires it under this Part 2 of this Policy, all other Council Members are to be advised and offered to be provided with a copy of the same information.
- 5.2 Where a copy of information is otherwise given to a Council member under this Policy, all other Council members are to be advised and offered to be provided with a copy of the same information.

6. Conditions Imposed on Access to Information

Where it appears to the CEO, in dealing with a request by a Council or Committee Member for access to any information held by the Shire, that:

- a) there is doubt as to whether access to the information is relevant to the performance by the Member of any of the Member's functions under the Act or under any other written law; or
- b) the information is of a confidential nature; or

- c) the information for some other reason (e.g. possibility of defamation) should be subjected to special custodial arrangements,

BUT the CEO nevertheless considers that access to the information should be given, the CEO in those circumstances may impose conditions on the access including (but without limiting the generality of the foregoing):

- Conditions in relation to the use of the information;
- Conditions in relation to custody of any document;
- Conditions in relation to the time during which the member may retain any document in the member's possession or otherwise stipulating when the document must be returned.

AND THE CEO MAY in any of the circumstances referred to above refuse to allow any document to be copied, or to be removed from the place where access is given.

7. Decision by Council

- 7.1 If a Council or Committee Member is dissatisfied with a condition imposed by the CEO on access to any information, or as to the custody of any document pursuant to the preceding provisions of this Policy, the Member may request the CEO to refer the matter to the Council for determination, and in that case the CEO shall ensure that the matter is brought forward as an item of business behind closed doors at the next Ordinary Meeting of Council.
- 7.2 If an issue is referred to the Council under the preceding provision of this Policy, the Council should determine the issue by Simple Majority resolution and may apply conditions to any decision giving access to information. The Member making the request for information and the CEO, as appropriate, shall act without delay upon any decision made by the Council.

Statement

1. The Shire of Mundaring supports and endorses the principle enshrined in the Act that a person who is a Council member can and shall be entitled to have access to inspect any information held by the Shire, confidential or otherwise, that is relevant to the performance by the Council or Committee member of his or her functions under the Act or under any other written law.
2. Documents issued under confidential cover to members of the Council or Committee remain confidential until such time as the CEO determines, or the Council resolves, to release the documents for public information.
3. The CEO, in assigning a "confidential" status designation to a document, shall do so judiciously in circumstances deemed to be in the public interest and/or the best interests of the Shire of Mundaring.
4. The designation of "confidential" information may be assigned to documents concerning matters such as:
 - (a) Industrial/personnel matters
 - (b) Legal matters
 - (c) Internal working documents/discussion papers
 - (d) Matters particularly referred to in the Act including:
 - (i) Matters affecting an employee or employees;
 - (ii) The personal affairs of any person;
 - (iii) Contracts which relate to matters to be discussed at a Council or Committee meeting;
 - (iv) Legal advice obtained concerning a matter to be discussed at a Council or Committee meeting;
 - (v) A matter that if disclosed would reveal a trade secret; information that has a commercial value to a person, or information about the business, professional, commercial or financial affairs of a person;
 - (vi) A matter that if disclosed could be reasonably expected to impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law; endanger the security of Shire property; or prejudice the maintenance or enforcement of a lawful measure for protecting public safety;
 - (vii) Information which is the subject of a direction given under S23 (1)(a) of the *Parliamentary Commissioner Act 1971*; and
 - (viii) Other matters which may be prescribed.

Local Government Act 1995

Section 5.92 provides as follows:-

- "1) A person who is a council member or a committee member can have access to any information held by the local government that is relevant to the performance by the person of any of his or her functions under this Act or under any other written law.
- 2) Without limiting sub-section (1), a council member can have access to:-
- a) all written contracts entered into by the local government; and
 - b) all documents relating to written contracts proposed to be entered into by the local government."

Section 5.94 provides as follows:-

A person can attend the office of a local government during office hours and, unless it would be contrary to section 5.95, inspect, free of charge, in the form or medium in which it is held by the local government and whether or not it is current at the time of inspection —

- (a) any code of conduct;
- (aa) any regulations prescribing rules of conduct of council members referred to in section 5.104;
- (ab) any register of complaints referred to in section 5.121;
- (b) any register of financial interests;
- (c) any annual report;
- (d) any annual budget;
- (e) any schedule of fees and charges;
- (f) any plan for the future of the district made in accordance with section 5.56;
- (g) any proposed local law of which the local government has given Statewide public notice under section 3.12(3);
- (h) any local law made by the local government in accordance with section 3.12;
- (i) any regulations made by the Governor under section 9.60 that operate as if they were local laws of the local government;

- (j) any text that —
 - (i) is adopted (whether directly or indirectly) by a local law of the local government or by a regulation that is to operate as if it were a local law of the local government; or
 - (ii) would be adopted by a proposed local law of which the local government has given Statewide public notice under section 3.12(3);
- (k) any subsidiary legislation made or adopted by the local government under any written law other than under this Act;
- (l) any written law having a provision in respect of which the local government has a power or duty to enforce;
- (m) any rates record;
- (n) any confirmed minutes of council or committee meetings;
- (o) any minutes of electors' meetings;
- (p) any notice papers and agenda relating to any council or committee meeting and reports and other documents that have been —
 - (i) tabled at a council or committee meeting; or
 - (ii) produced by the local government or a committee for presentation at a council or committee meeting and which have been presented at the meeting;
- (q) any report of a review of a local law prepared under section 3.16(3);
- (r) any business plan prepared under section 3.59;
- (s) any register of owners and occupiers under section 4.32(6) and electoral rolls;
- (t) any contract under section 5.39 and variation of such contract;
- (u) such other information relating to the local government —
 - (i) required by a provision of this Act to be available for public inspection; or
 - (ii) as may be prescribed.