

# Councillors' Access to Information & Interaction between Councillors and Staff policy

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## 1. Introduction

The *Local Government Act* provides distinctly different roles for Councillors and Council staff. The Council is responsible for strategic direction and for determining the policy framework of Council. The Council also has a statutory role as the consent authority, under both the *Environmental Planning and Assessment Act* and the *Local Government Act*, for applications for development consent and other approvals. The General Manager, with the senior officers of Council, is responsible for the effective management of the organisation and the carrying out of Council's policies and strategic objectives.

The distinction between these two roles, however, may be unclear. There often needs to be personal interaction between Councillors and Council officers, particularly regarding access to and provision of information to effectively integrate policy making and service delivery. This has created the need for guidelines that help Councillors and staff to understand fully their respective roles and how they should operate, in order to perform their job effectively.

The provision of sufficient, relevant and timely information is a critical aspect of the Councillor decision-making process. Councillors' access to information is vitally important to achieve informed decision making. In this regard, General Managers have an obligation to ensure that Councillors are provided with the necessary information to undertake their civic duties effectively.

## 2. Aims

This policy aims to:

- Provide clear communication channels between Councillors and staff;
- Ensure the speedy provision of accurate information to Councillors;
- Recognise the particular circumstances of the Council; and
- Provide appropriate sanctions for non-compliance.

## 3. Objectives

The policy objectives are:

- To provide a documented process on how Councillors can access Council records;
- To ensure Councillors have access to all documents reasonably necessary for them to exercise their statutory role as a member of the governing body of the Council;
- To ensure that Councillors receive advice from nominated staff to help them in the performance of their civic duty in a timely and regulated manner;
- To provide direction on Councillors' rights of access to Council buildings; and

- To provide a clear and consistent framework for the reporting of and appropriate application of sanctions for breaches of this policy.

## 4. Access to Council records by Councillors

The entitlement of a Councillor to information is expressly included in the Model Code of Conduct for local councils in NSW. Part 7 of the Model Code provides guidance on the requirements for staff to provide information to Councillors.

### “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*.

The General Manager must provide Councillors and administrators with information sufficient to enable them to carry out their civic office functions.

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 (*being this policy*).

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.

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.

### Councillors and administrators to properly examine and consider information

Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

### 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. The general manager or public officer must state the reasons for the decision if access is refused.

### Use of certain council information

In regard to information obtained in your capacity as a council official, you must:

- only access council information needed for council business

- not use that council information for private purposes
- 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
- only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

### 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.

In addition to your general obligations relating to the use of council information, you must:

- protect confidential information
- only release confidential information if you have authority to do so
- only use confidential information for the purpose it is intended to be used
- not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person
- not use confidential information with the intention to cause harm or detriment to your council or any other person or body
- not disclose any information discussed during a confidential session of a council meeting.

### Personal information

When dealing with personal information you must comply with:

- the Privacy and Personal Information Protection Act 1998*
- the Health Records and Information Privacy Act 2002*
- the Information Protection Principles and Health Privacy Principles
- council's privacy management plan
- the Privacy Code of Practice for Local Government.<sup>1</sup>

### Statutory Provisions

The Government Information (Public Access) Act (GIPA) 2009 promotes openness, accountability and transparency of government agencies. It is designed to make government agencies more proactive in providing information to the public. This includes being proactive in providing information to Councillors.

Council has an obligation under the *Government Information (Public Access) Act 2009* (GIPA) to publicise certain 'open access information' on its website, unless there is an overriding public interest against disclosure of the information or unless to do so would impose unreasonable additional costs to Council. In addition, a Council is

required to comply with the spirit and intent of the GIPA Act and applicable common law and the Model Code of Conduct, so as to provide open access to the Council's documents, other than where public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure. For example, there may be occasions where the release of:

- personal information/ information identifying a person; or
- business information; or
- information concerning government affairs

would not be released under GIPA, due to public interest considerations.

### Council procedures

- Access to a Council files, records or other documents can only be provided according to this policy to ensure that access is obtained in ways that are legal and appropriate. This policy does not limit or restrict statutory or common law rights of access.
- Councillors can request the General Manager, the Director Governance & Financial Services or the Manager Administrative Services to provide access to a particular Council record. Access to such documents will be restricted to the Councillors' Rooms/Mayoral Office/Administration Building and is to be undertaken in the company of a staff member nominated by the General Manager. It is expected that Councillors act reasonably in making a request for information.
- Councillors who have a personal (as distinct from civic) interest in a document of Council have the same rights of access as any other person.
- Councillors are entitled to access all files, records or other documents, where that document is identified as 'open access' information in the GIPA Act or where the document/information relates to a matter currently before the Council.
- The General Manager shall not unreasonably decide that a document is not relevant to the performance of the Councillor's civic duty and deny access to a Council document. The General Manager must state his/her reasons for the decision if access is refused.
- Councillors can request access to other documents of the Council either by a Notice of Motion to the Council or GIPA Act application.
- The General Manager, Director Governance & Financial Services and the Manager Administrative Services, shall keep a record of all requests by Councillors for access to information (other than those listed as 'open access' information under the GIPA Act or by a Notice of Motion at a Council meeting). The record of these requests will be made available to any other Councillor who requests it. Any information that is given to a particular Councillor in the pursuit of their civic duties will also be made available to any other Councillor who requests it.
- Confidential information must only be used for Council purposes. While this may create some difficulties for Councillors when assessing the

<sup>1</sup> Extract from Council's Code of Conduct (Part 7)

information, it is a necessary safeguard to protect Council's interests. It also helps to protect Councillors against allegations that they revealed information which damaged Council's interests.

- Councillors must not release information (including personal information about a third party) obtained or accessed in their role as a Councillor, to any other party. All requests for access to information by members of the public must be processed through Council's Access to Information Request system.
- If the General Manager refuses to allow a Councillor to inspect any record or document, the Councillor may:
  - at a meeting of the Council, move for the production of the document. However, the Councillor must give notice of intention to move the motion; or
  - lodge a formal request (to the appropriate Council officer) under the GIPA Act. The GIPA Act provides three options to have a decision reviewed:
    - an internal review by Council;
    - an external review by the Privacy and Information Commissioner; or
    - an external review by the NSW Civil and Administrative Tribunal.
- If Council passes a motion for the production of a Council record, the Council must ensure that the record:
  - Is produced immediately and laid on the table for inspection by the Councillors; and
  - Is made available for inspection by any Councillor on reasonable notice to the General Manager during the Council's ordinary office hours on any day that is within one month after the passing of the motion.

Where it is believed that significant resources will be required to respond to a request for information, the General Manager should advise the Councillor and provide details of the estimates of time and/or costs that are likely to be incurred in providing the information. An indication should also be given of what other matters will not be able to be attended to as a result of compiling the requested information.

In the event that a matter is unable to be resolved internally, or a Councillor remains dissatisfied with the outcome after following the procedures set out above, the matter is to be referred to the complaint handling branch of either the NSW Ombudsman's Office or the Office of Local Government (Department of Premier & Cabinet).

## 5. Interaction between Councillors and Council staff

### "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.

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.

### 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.

Members of staff of council must:

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

does not conflict with the performance of their official duties.

### 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.

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."<sup>2</sup>

The interaction between Councillors and staff at Council and Council Committee Meetings is regulated by:

- Section 360 of the Local Government Act;
- The Local Government (General) Regulation;
- Council's Code of Conduct and
- Council's Code of Meeting Practice.

Section 360 of the Local Government Act enables the Council to make regulations in regard to the conduct of meetings and to adopt a Code of Meeting Practice and states that meetings must be conducted in accordance with the Code of Meeting Practice. Randwick Council has adopted a Code of Meeting Practice.

The Local Government (General) Regulation details how, in Council meetings, Councillors can ask questions of other Councillors by going through the Chairperson. The regulation also details the process Councillors must follow if they wish to ask a question of Council staff, by going through the General Manager.

### Outside of Meetings

- The General Manager is responsible to the Council for performance and direction of all staff and day-to-day management of Council. Therefore, it is appropriate that all requests for information and approaches to staff outside the forum of a Council or Committee meetings be directed to the General Manager or persons nominated by the General Manager (see Appendix A).
- Only those officers nominated by the General Manager (refer to the "Councillor/Staff Liaison Listing") can provide advice to Councillors.
- For all but straightforward advice on administrative matters, Councillors should put their requests for information or advice in writing to be answered by the General Manager or the appropriate nominated Council officer. These written requests then form part of Council records and can be filed appropriately. The General Manager must indicate in writing the reasons for refusing a request.
- A Council officer has the discretion to refer any request (from a Councillor) for information to the General Manager. The Council officer

must indicate to the Councillor their reasons for the referral.

- If a Councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager (or the Mayor if it was the General Manager who refused to provide the advice). If the Councillor is still dissatisfied they should request the information by way of a Motion Pursuant to Notice to the Council.
- Councillors must not attempt to direct staff as to the performance of their work. Staff must report all such attempts immediately to their Director or the General Manager.
- Councillors must not request staff to undertake work for the Councillor or any other person.
- A Councillor, member of staff or delegate must not take advantage of their official position to improperly influence other Councillors, members of staff or delegates in the performance of their public or professional duties for the purpose of securing private benefit for themselves or for some other person.

## 6. Inappropriate interactions

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

- Councillors and administrators approaching staff and staff organisations to discuss individual or operational staff matters other than broader workforce policy issues.
- Council staff approaching councillors and administrators to discuss individual or operational staff matters other than broader workforce policy issues.
- Council staff refusing to give information that is available to other councillors to a particular councillor.
- 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.
- 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.
- 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.
- Council staff meeting with applicants or objectors alone AND outside office hours to discuss applications or proposals.
- 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

<sup>2</sup> Extract from Council's Code of Conduct (Part 6)

the case of the Mayor or administrator, exercising their power under section 226 of the Act.”<sup>3</sup>

## 7. Access to Council offices

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.

Councillors are not to leave members of the public unattended in Councillors’ Rooms at any time. Visitors to the Councillors’ Rooms are the responsibility of the Councillor(s) who organises the meeting in question.

Councillors and administrators must not enter staff-only areas of council buildings without the approval of the General Manager, a Director or Manager.

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.

Councillors who are not in pursuit of their civic duties have the same rights of access to Council buildings and premises as any other member of the public.

## 8. Breaches of this policy

For this policy to be effective and meaningful, appropriate reporting of breaches and appropriate sanctions need to be established and consistently applied. All parties need to have confidence that the policy will be complied with and breaches will be dealt with appropriately. Any cases of clear breaches of the policy that are not dealt with appropriately will erode confidence in the ability of the Council to deal with complaints and reduce the efficiency of the Council.

Non compliance with this policy will be considered a breach of the Code of Conduct.

Breaches will be dealt with in accordance with the Code of Conduct and ‘Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW - March 2013’.

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<sup>3</sup> Extract from Council’s Code of Conduct (Part 6.7)