	<b>COUNCIL POLICY</b>  <b>S92 CODE OF PRACTICE FOR ACCESS TO MEETINGS &amp; DOCUMENTS</b>	Version No:	13
		Issued:	23 January 2024
		Next Review:	January 2028

## 1. Introduction

- 1.1 Section 92 of the *Local Government Act 1999* (the Local Government Act) requires Council to prepare and adopt a Code of Practice for Access to Meetings and Documents (the Code of Practice).
- 1.2 Public access to Council and Committee meetings and documents is one of the primary means by which the community can gain access to information about the business of Council and Council committees. This Code of Practice includes information relating to:
- o access to the agenda for meetings;
  - o public access to meetings;
  - o the process to exclude the public from meetings;
  - o matters for which the Council, or a Council committee, can order that the public be excluded;
  - o how the Council will approach the use of the confidentiality provisions in the Local Government Act;
  - o public access to documents, including minutes;
  - o review of confidentiality orders;
  - o accountability and reporting to the community, and the availability of the Code of Practice; and
  - o grievances about the use of the Code of Practice by Council.

## 2. Adoption

- 2.1 This Code of Practice was adopted by the Council on 24 January 2024.


## 3. Statement of principle

- 3.1 In fulfilling the role of an effective Council that is responsive to the needs of the community and which operates within the legal framework prescribed by the Local Government Act, the [insert name of Council] is fully committed to the principle of open and accountable government. Council also recognises that on a limited number of occasions it may be necessary, in the broader community interest, to restrict public access to discussion/decisions and/or documents.

## 4. Public access to the agenda for meetings

- 4.1 At least three clear days<sup>1</sup> before the Council or Council Committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council/Committee members setting out the date, time, and place of the meeting. The notice

<sup>1</sup> In the calculation of ‘clear days’ in relation to the giving of notice before a meeting, the day on which the notice is given and the day of the meeting are not taken into account. Saturdays, Sundays and public holidays are taken into account. In addition, if notice is given after 5:00pm on a day, the notice will be taken to have been given on the next day. For example, for notice given on a Thursday at 2:00pm for a following Monday meeting, the clear days are Friday, Saturday and Sunday.

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must contain or be accompanied by the agenda for the meeting. Items listed on the agenda will be described accurately and in reasonable detail.

- 4.2 The notice of meeting will be placed on public display at the principal office of the Council and the notice and agenda will be published on the Council’s website:  
[www.mountgambier.sa.gov.au](http://www.mountgambier.sa.gov.au)
- 4.3 The notice will be kept on public display and continue to be published on the website until the completion of the relevant Council or Council committee meeting. The agenda will be published on the Council’s website.
- 4.4 Non-confidential agenda documents and reports that are to be considered at the meeting must be made available:
- o In the case of a document or report supplied to members before the meeting:
    - on a website determined by the CEO, as soon as practicable after being supplied to members of the Council.
  - o In the case of a document or report supplied to members of the Council at the meeting:
    - at the meeting, as soon as practicable after they are supplied to the members of Council. These documents will also be subsequently uploaded onto the Council’s website.
- 4.5 Members of the public may obtain a copy of the agenda and any particular reports on payment of a fee (if any) fixed by the Council.
- 4.6 Agenda papers provided to members of Council, or members of a Committee, may include an indication from the CEO that the Council or Committee may determine to consider an item in confidence, with the public to be excluded from the meeting during discussion of that item. Where such an indication is made, the CEO must specify the basis under which the confidentiality order could be made in accordance with section 90(3) of the Local Government Act<sup>2</sup>.

## 5. Public access to meetings

- 5.1 The principle of open and accountable government is strongly supported. Council facilitates public attendance at meetings of the Council and Committees through public notification of meetings.
- 5.2 Council and Council Committee meetings are open to the public and attendance is encouraged, noting there may be circumstances where the Council (or the Council committee) believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, decision) of a particular matter.
- 5.3 The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision-making.


<sup>2</sup> See sections 83(5) (Council) and 87(10) (Committee) of the *Local Government Act 1999*.

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## 6. Information and briefing sessions

- 6.1 Information and briefing sessions provide a valuable opportunity to enhance council decision-making processes by providing opportunities for council members to become better informed on issues and seek further clarification prior to making decisions at formally constituted council meetings
- 6.2 Councils or the CEO are permitted to facilitate an ‘information or briefing session’ where more than one member of the Council or Council Committee is invited.
- 6.3 A matter must not be dealt with at an information or briefing session in such a way so as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of Council or Committee.
- 6.4 An information or briefing session on a matter that will be included on a council agenda must be open to the public. However, the Council or the CEO may order that the information or briefing session be closed to the public if the matter listed for discussion falls within the confidentiality provisions listed in section 90(3) of the Local Government Act.
- 6.5 Section 90A(5) provides that when an order is made to close an information or briefing session to the public, as soon as reasonably practicable after the making of the order a record should be made of:
- o The grounds on which the order was made; and
  - o The basis on which the information falls within the ambit of each ground of section 90(3) on which the order was made; and
  - o If relevant, the reasons that receipt, consideration or discussion of the information publicly would be contrary to the public interest
- 6.6 Where an order is made to close an information or briefing session, a person who enters or remains in a room knowing that the order is in place will be guilty of an offence and liable to a penalty not exceeding \$500. This provision does not apply to a member of the council or a person permitted to be in the room by the council or CEO in accordance with the order made to close the information or briefing session.
- 6.7 Section 90(7a) of the Local Government Act applies to information or briefing sessions as if they were a meeting of a council committee. Accordingly, a council may adopt a procedure\* for the holding of information or briefing sessions by telephone or other electronic means, provided that members of the public can hear the discussion between all participants at the information or briefing session. Information or briefing sessions will be taken to be conducted in a place open to the public even if one or more council members participate in the session by telephone or other electronic means in accordance with any procedures prescribed by the regulations or determined by the council.

*\*refer Council determined meeting procedures as adopted under section 89 – if/as adopted under separate policy.*


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- 6.8 Whether or not an information or briefing session has been open to the public, the following information must be published as soon as practicable after the holding of the session<sup>3</sup>:
- o the place, date and time of the session;
  - o the matter discussed at the session; and
  - o whether or not the session was open to the public.
- 6.9 There are currently no regulations requiring the publication of information before the holding of an information or briefing session. However, the City of Mount Gambier, at its discretion, publish information before the information or briefing session (in addition to publishing the required information after the information or briefing session is held) as a means of facilitating greater transparency and attendance at information and briefing sessions by members of the public.
- 6.10 There is no obligation for councils to make documents provided to council members at information or briefing sessions available to the public. In addition, documents presented to information or briefing sessions that are closed to the public because they comprise information or a matter listed in section 90(3) are confidential at law.
- 6.11 Absent a specific decision of the Council or Chief Executive Officer to the contrary, documents presented to information or briefing sessions are not publicly available and documents presented to information or briefing sessions that are closed to the public are confidential.

## 7. Process to exclude the public from a meeting

- 7.1 The usual practice of the City of Mount Gambier is to list all items indicated for consideration in confidence within the last section of the Council or Council Committee agenda, to allow all other items of business to be transacted with members of the public present at the meeting and not required to leave the room until the 'Confidential' section of the agenda is reached.
- 7.2 Despite the above, there may be circumstances where, during the course of a meeting, it becomes apparent that a matter should be considered in confidence. In those cases, members of the public will be asked to leave the meeting whilst the matter is discussed (subject to an appropriate resolution of the council being carried to close the meeting).
- 7.3 Before a meeting orders that the public be excluded to enable consideration of a particular matter in confidence, the Council or Council Committee must, in public, formally determine if this is necessary and appropriate, and then pass a resolution to exclude the public while dealing with that particular matter. If this occurs, then the public must leave the room. This means that all members of the public (including staff, but not including a member of the Council or Council Committee), unless exempted by being named in the resolution as entitled to remain, are required to leave the room.
- 7.4 Once Council, or a Council Committee has made the order, it is an offence for a person, who knowing that an order is in force, to enter or remain in the meeting room. It is lawful for an employee

<sup>3</sup> Regulation 8AB—Information or briefing sessions, *Local Government (General) Regulations 2013*


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of the council or a member of the police to use reasonable force to remove the person from the room if he or she fails to leave on request.

- 7.5 Once discussion on that particular matter is concluded, the public are then permitted to re-enter the meeting. If there is a further matter that needs to be considered in confidence it is necessary to repeat the formal determination process and to resolve to exclude the public as above.
- 7.6 Please note that the Council, or the Council Committee, can permit a particular person or persons to remain in the meeting by including reference to them within the resolution. An example would be allowing a ratepayer who is suffering personal hardship to remain in the meeting when their circumstances concerning the payment of rates is being discussed.

## 8. Use of the confidentiality provisions

- 8.1 In accordance with the requirements of section 90(3) of the Local Government Act, the Council, or a Council Committee, may order that the public be excluded in order to receive, discuss or consider any of the following information or matters in confidence:
- (a) *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*
  - (b) *information the disclosure of which—*
    - (i) *could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Council; and*
    - (ii) *would, on balance, be contrary to the public interest;*
  - (c) *information the disclosure of which would reveal a trade secret;*
  - (d) *commercial information of a confidential nature (not being a trade secret) the disclosure of which—*
    - (i) *could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and*
    - (ii) *would, on balance, be contrary to the public interest;*
  - (e) *matters affecting the security of the Council, members or employees of the Council, or Council property, or the safety of any person;*
  - (f) *information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;*
  - (g) *matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;*
  - (h) *legal advice;*

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- (i) *information relating to actual litigation, or litigation that the Council or Council Committee believes on reasonable grounds will take place, involving the Council or an employee of the Council;*
- (j) *information the disclosure of which—*
  - (i) *would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council); and*
  - (ii) *would, on balance, be contrary to the public interest;*
- (k) *tenders for the supply of goods, the provision of services or the carrying out of works;*
- (m) *information relating to a proposed amendment to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the Planning, Development and Infrastructure Act 2016 before the draft instrument or amendment is released for public consultation under that Act;*
- (n) *information relevant to the review of a determination of a Council under the Freedom of Information Act 1991;*
- (o) *information relating to a proposed award recipient before the presentation of the award.*

8.2 The Local Government Act provides a definition of “personal affairs” which includes a person’s:

- o financial affairs
- o criminal records
- o marital or other personal relationships
- o personal qualities, attributes or health status
- o employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person,

but it does not include the personal affairs of a body corporate.


**NOTE:** This is an inclusive (not exhaustive) list of personal affairs matters and other matters may also constitute a person’s personal affairs.

8.3 With respect to matters on a council agenda, where a person provides information to the Council and requests that it be kept confidential, Council is not able to even consider this request unless the matter is one that falls within section 90(3). If this is the case, Council will then be in a position to consider the request on its merits.


8.4 In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may<sup>4</sup>:

- o cause embarrassment to the Council or Committee concerned, or to members or employees of the Council;
- o cause a loss of confidence in the Council or Committee;
- o involve discussion of a matter that is controversial within the council area; or
- o make the council susceptible to adverse criticism.

<sup>4</sup> Section 90(4), *Local Government Act 1999*

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- 8.5 If a decision to exclude the public is taken, the Council or the Council Committee is required to make a note in the minutes of the making of the order and specify:
- o the grounds on which it was made;
  - o The basis on which the information or matter falls within the ambit of each confidentiality ground; and
  - o (if relevant,) why receipt, consideration or discussion of the information or matter in public would be contrary to the public interest.
- 8.6 Once discussion of the matter is concluded, the meeting must then consider if it is necessary to make an order identifying the document(s) (or parts of the document(s)) associated with that item (including minutes) that are to remain confidential.
- 8.7 If the meeting determines that it is necessary to keep a document(s) (or parts of document(s)) confidential, then a resolution for an order to this effect is required in accordance with section 91(7) of the Local Government Act.
- 8.8 The Council or the Council committee can only resolve to keep minutes and/or documents confidential under section 91(7) if they were considered in confidence at a Council or Committee Meeting pursuant to sections 90(2) and 90(3).
- 8.9 The Council will not consider a number of agenda items “in confidence” together i.e. en bloc. It will determine each item separately and consider the exemptions relevant to each item.
- 8.10 Once discussion of the matter is concluded and the public have returned, the decision in relation to the matter will be communicated unless the Council has resolved to order that the resolution remain confidential. Details relating to any order to keep information or a document confidential in accordance with section 91(7) will also be made known.
- 8.11 In accordance with section 91(8) the Council or the Council committee must **not** make an order to prevent:
- o the disclosure of the remuneration or conditions of service of an employee of the Council after the remuneration or conditions have been set or determined; or
  - o the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the Council as to why a successful tenderer has been selected; or
  - o the disclosure of the amount or amounts payable by the Council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the Council after the contract has been entered into by all parties to the contract; or
  - o the disclosure of the identity of land that has been acquired or disposed of by the Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council.

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- 8.12 Where keeping a document confidential is considered necessary, a resolution to this effect is required which shall include:
- o the grounds for confidentiality; and
  - o the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed – if the order has a duration of more than 12 months, the order must be reviewed at least once in every year; and
  - o (if applicable) whether the power to revoke the order will be delegated to an employee of the Council.<sup>5</sup>

- 8.13 In all cases the objective is that the information be made publicly available at the earliest possible opportunity and that the community is informed of any Council order and the associated implications.


**NOTE:** There is no legal requirement to resolve to “come out of confidence” or to go back into “public session”. The public may and should be invited to re-enter the meeting when consideration of the relevant Agenda Item has concluded. The public are also entitled to be present for the debate and decision on whether any subsequent item should be considered in confidence.

## 9. Review of confidentiality orders

- 9.1 A confidentiality order made under section 91(7) of the Local Government Act must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. In any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year.
- 9.2 An order will lapse if the time or event specified has been reached or carried out. There is no need for the Council to resolve for the confidentiality order to be lifted. Once the order expires or ceases to apply, the minutes and/or documents automatically become public. At this point in time, the Council will make this information publicly available by publishing it on the Council’s website.
- 9.3 Orders that exceed 12 months must be reviewed annually and the Council must assess whether the grounds for non-disclosure are still relevant and, if so, provide the relevant grounds and reasons for the minutes and/or documents remaining confidential. The conduct of the annual review can be delegated to the CEO and sub-delegated to an employee of the Council if appropriate. If there are any items that require a fresh confidentiality order because the original order is about to expire, then the reviewer will prepare a report to Council making recommendations with respect to each item to be retained in confidence. While a Council may delegate the power to undertake an annual review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of the Local Government Act.
- 9.4 A Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the application of the relevant ground under section 90(3) of the Local Government Act. Section 90(3) of the Local Government Act must be applied separately to each item within the scope of the review and not en bloc.

<sup>5</sup> Section 91(9) of the *Local Government Act 1999*.



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- 9.5 The Council or Council Committee may delegate to an employee of the Council the power to revoke an order made in accordance with section 91(7) of the Act. Such delegation may be subject to conditions.

## 10. Accountability and reporting to the community

- 10.1 Consistent with the principle of accountability to the community, a report on the use of sections 90(2) and 91(7) by the Council and Council committees must be included in the annual report of a Council as required by Schedule 4 of the Local Government Act. The report should include the following information, separately identified for both Council and Council committees:
- Total number of orders made under sections 90(2) and 90(3) and 91(7) in the relevant financial year;
  - The date and subject of each order made under sections 90(2) and 90(3) and 91(7) in the relevant financial year;
  - In relation to each ground specified in section 90(3), the number of times in the relevant financial year that an order was made under section 90(2) and 90(3) for each ground;
  - The number of orders made under section 91(7) that expired, ceased to apply or were revoked during the relevant financial year and the date and subject of each such order; and
  - The number of orders made under section 91(7) since 15 November 2010 that remained operative at the end of the relevant financial year.

### Public access to documents

- 10.2 The Local Government Act requires Councils to make available a large number of documents. Many of these are set out in Schedule 5, with other requirements contained in other sections of the Local Government Act.
- 10.3 Schedule 5 documents must be published on a website determined by the CEO. Councils must also, upon request, provide a person with a printed copy of any document referred to in Schedule 5. Provision of printed copies of a document may require payment of a fee (if any) set by Council (see Council's fees and charges register for any relevant fee).
- 10.4 Requests to access Council and Council Committee documents that are not otherwise publicly available, can be made under the *Freedom of Information Act 1991*. Inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's accredited Freedom of Information Officer.

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## 11. Public access to minutes

- 11.1 Minutes of a meeting of Council or a Council Committee must be made available, on the Council's website [www.mountgambier.sa.gov.au](http://www.mountgambier.sa.gov.au).
- 11.2 Printed copies of minutes can be provided to a person on request on payment of a fee (if any) set by Council (see Council's fees and charges register for any relevant fee).

## 12. Availability of the Code of Practice

- 12.1 A copy of this Code of Practice will be made available on the Internet at [www.mountgambier.sa.gov.au](http://www.mountgambier.sa.gov.au). City of Mount Gambier will also, on request, provide a person with a printed copy of the Code of Practice on payment of a fee (if any) fixed by the council<sup>6</sup> (see Council's fees and charges register for any relevant fee).


## 13. Review of the Code of Practice

- 13.1 The Council is required to review this code within 12 months after the conclusion of each periodic election.
- 13.2 The next scheduled review is due to occur in 2027.

## 14. Grievance

- 14.1 Council has established procedures for the review of decisions under section 270 of the Local Government Act for:
- o Council, and its Committees;
  - o employees of the Council; and
  - o other persons acting on behalf of the Council.
- 14.2 Should a person be aggrieved about public access to either a meeting or a document they can lodge an application for review of that decision under the procedures established by Council. The Procedures are available in Council's Internal Review of Council Decisions Policy.

<sup>6</sup> Section 132(1) and Schedule 5.

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File Reference:	AF18/51
Applicable Legislation:	Local Government Act 1999 Local Government (Procedures at Meetings) Regulations 2013 Local Government (General) Regulations 2013
Strategic Reference:	
Related Policies:	P195 Community Consultation and Engagement Policy R180 Records Management Policy C290 Internal Review of Council's Decisions
Related Procedures:	
Related Documents:	Confidentiality Guidelines: How to Apply Section 90 (2022) Council Meeting Procedures Handbook (2019) Minute Takers Handbook for Local Government (2014) Confidential Items Register

## DOCUMENT DETAILS

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