

POLICY



C019 Public Transparency Policy

1 Purpose

This Public Transparency Policy (the **Policy**) supports Council in its ongoing drive for good governance and reinforces the importance of open and accountable conduct. In practice, it provides guidance as to how Council information is to be made publicly available. Council must adopt and maintain a public transparency policy under section 57 of the Local Government Act 2020 (the Act). This Policy gives effect to the public transparency principles outlined in section 58 of the Act -

- (a) Council decision making processes must be transparent except when Council is dealing with information that is confidential by virtue of the Act or any other Act;
- (b) Council information must be publicly available unless –
 - (i) the information is confidential by virtue of the Act or any other Act;
 - (ii) public availability of the information would be contrary to the public interest;
- (c) Council information must be understandable and accessible to members of the municipal community;
- (d) public awareness of the availability of Council information must be facilitated.

2 Scope

This policy applies to all Councillors, delegated committees under the Act and all employees of Hindmarsh Shire Council.

3 Definitions

For the purposes of this policy, Council adopts the following definitions:

Community

Means the Municipal Community and includes –

- (a) people who live in the municipal district of the Council;
and
- (b) people and bodies who are ratepayers of the Council;
and
- (c) Traditional Owners of land in the municipal district of the Council; and
- (d) people and bodies who conduct activities in the municipal district of the Council.¹

¹Local Government Act 2020 s3

Confidential information	has the same meaning under section 3 of the Act and is further described under clause 7(a) of this Policy
Council	means Hindmarsh Shire Council
Closed Meetings	Under section 66(5) of the Act, Council may determine that a meeting is to be closed to the public to consider confidential information. A meeting may therefore be closed to the public if Council resolves to close the meeting, in order to consider a confidential matter regarding issues of a legal, contractual or personnel nature and other issues deemed not in the public interest.
Transparency	a lack of hidden agendas or conditions, and the availability of all information needed in order to collaborate, cooperate and make decisions effectively.
Contrary to Public Interest	Means where Council may refuse to release information if it determines that the harm likely to be created by releasing the information will exceed the public benefit in being transparent.

4 Policy

4.1 Policy Statement

Transparency and accountability go hand in hand. Openness, accountability, and honesty define local government transparency and Council's obligation to share information with the community. Transparency is central to the ability of the community to hold its elected officials accountable.

Public transparency, in the local government context, requires that the decision-making processes of the Council be conducted openly with information made freely and proactively available to individuals and participation in decision-making is encouraged. There should be minimal exceptions and in accordance with legal requirements. An explanation should always be provided as to why information will not be released or why a decision cannot be made with full transparency.

4.2 Application

To enact the principles of transparency, Council will apply them to the following processes.

4.2.1 Decision-making at Council Meetings

Decision-making at Council meetings –

- Will be undertaken in accordance with the Governance Rules.
- Will be conducted in an open and transparent forum, unless in accordance with the provisions in the Governance Rules.
- Will be informed through community engagement, in accordance with the Community Engagement Principles and the Community Engagement Policy.

4.2.2 Council Information

Council delivers a range of services to residents, business and visitors to the municipality and our services and functions are documented. Council will publish information about Council services and administration activities on Council's website or will make this information available upon request.

Part II of the *Freedom of Information Act 1982* requires Council to publish a number of statements designed to assist individuals in accessing the information it holds. A list of available information is provided in the Part II Statement published in accordance with the *Freedom of Information Act 1982*. This information includes:

Documents such as:

- Plans and Reports adopted by Council;
- policies;
- project and service plans;
- grant application, tenders and tender evaluation material;
- service agreements, contracts, leases and licences;
- Council leases, permits and notices of building and occupancy; and
- relevant technical reports and / or research that informs decision making.

Procedural information such as:

- Practice notes and operating procedures;
- application processes for approvals, permits, grants, access to Council services;
- decision making processes;
- guidelines and manuals;
- community engagement processes; and
- complaints handling processes.

Council records including but not limited to the details below, will be made available where possible on Council's website or on request:

- Council and Delegated Committee meeting agendas and minutes;
- reporting from Committees required to in accordance with the Governance Rules;
- details of Delegated Committees, Community Asset Committees and Advisory Committees;
- registers of gifts, benefits and hospitality offered to Councillors or Council Staff;
- registers of travel undertaken by Councillors or Council Staff;
- registers of Conflicts of Interest disclosed by Councillors or Council Staff;
- submissions made by Council to State or Federal processes;
- details of any Memorandum of Understanding entered into by Council that are not subject to confidentiality clauses;
- registers of donations and grants made by Council;
- registers of leases entered into by Council, as lessor and lessee;
- register of Delegations;
- register of Authorised officers;
- register of Election campaign donations;
- summary of Personal Interests; and
- any other Registers or Records required by legislation or determined to be in the public interest.

Publications

Council publishes a range of newsletters and reports for residents, businesses and visitors to Hindmarsh. These can be downloaded from Council's website or by contacting Council for a copy. Some of these publications are available at Council's Libraries.

4.3 Transparency Considerations and Limitations

Some Council information that informs decision making by Council may not be made publicly available. This will only occur if the information is confidential information or if its release would be contrary to the public interest or in compliance with relevant legislation.

4.3.1 Legislation and Policy

The information made available is subject to the provisions of:

- the *Privacy and Data Protection Act 2014*;
- the *Local Government Act 2020*
- the *Freedom of Information Act 1982*;
- the *Health Records Act 2001*; and
- Council's Privacy Policy.

4.3.2 Confidential Information

"Confidential information" is defined in section 3 of the *Local Government Act 2020*. It includes the types of information listed in the following table.

Type of Information	Description
Council business	Information that would prejudice the Council's position in commercial negotiations if prematurely released.
Security	Information that is likely to endanger the security of Council property or the safety of any person if released.
Land use planning	Information that is likely to encourage speculation in land values if prematurely released.
Law enforcement	Information which would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person if released.
Legal privileged	Information to which legal professional privilege or client legal privilege applies.
Personal	Information which would result in the unreasonable disclosure of information about any person or their personal affairs if released.
Private commercial	Information provided by a business, commercial or financial undertaking that relates to trade secrets or that would unreasonably expose the business, commercial or financial undertaking to disadvantage if released.
Confidential meeting	Records of a Council and/or Delegated Committee meeting that are closed to the public to consider confidential information.

Internal arbitration Confidential information relating to internal arbitration about an alleged breach of the Code of Conduct – Councillors.

Councillor Conduct Panel Confidential information relating to a Councillor Conduct Panel matter.

Confidential information under the 1989 Act Information that was confidential information for the purposes of section 77 of the *Local Government Act 1989*.

Council may decide, in the interests of transparency, to release information to the public even though it is confidential under the Act. However, this will not happen if release is contrary to law, in breach of contractual requirements or if releasing the information is likely to cause harm to any person or is not in the public interest to do so.

4.3.3 Public Interest Test

Council is not required to make publicly available information if the release would be Contrary to the Public Interest, in accordance with the Act. Council may refuse to release information if it is satisfied that the harm to the community likely to be created by releasing the information will exceed the public benefit in it being released.

When considering possible harm from releasing information, Council will only concern itself with harm to the community or members of the community. Potential harm to the Council will only be a factor if it also damages the community, such as where it involves a loss of public funds or prevents the Council from performing its functions.

4.4 Freedom of Information

The *Freedom of Information Act 1982* gives individuals a right to apply for access to documents held by Council. Council is committed to proactive and informal release of information in accordance with the *Freedom of Information Act 1982*, and the Professional Standards issued by the Office of the Victorian Information Commissioner. Individuals are encouraged to contact Council prior to submitting an application under Freedom of Information as Council staff can advise what documents are available for inspection and in some instances can assist with providing the requested information informally.

5 Responsibilities

All Councillors and Council Officers are responsible for facilitating access to council information in accordance with this policy.

Specific responsibilities are detailed below -

Party/parties	Roles and responsibilities
Council	Champion the commitment and principles for public transparency through leadership, modelling practice and decision-making.
Executive Management Team	Champion behaviours that foster transparency and drive the principles through policy, process and leadership. Monitor implementation of this policy.

Senior Management Team	Manage areas of responsibility to ensure public transparency, good governance and community engagement is consistent with this policy.
All Staff	Public transparency is the responsibility of all employees as appropriate to their role and function. All staff respond to requests for information and facilitate provision of information in consultation with their manager and in alignment with this Policy.
Manager Governance	To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.

6 Non-Compliance

If a member of the community wishes to question a decision about the release of information, this should be raised directly with the officer handling the matter in the first instance. If the member of the community is still not satisfied and would like to contest the decision, this can be reported to Council's Manager Governance and Human Services on (03) 5391 4444.

If you are not satisfied with Council's response, the concerns can be raised directly with the Victorian Ombudsman's office on (03) 9613 6222. or via the website www.ombudsman.vic.gov.au.

7 Human Rights and Responsibilities Charter Compatibility Statement

This policy has been reviewed against section 13 of the *Charter of Human Rights and Responsibilities Act 2006*. Importantly, transparency is a human right under the *Charter of Human Rights and Responsibilities Act 2006*, namely, "the right to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives. Additionally, this policy also provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with.

8 Monitoring, Evaluation and Review

Council commits to monitoring processes, information sharing and decision making to understand the overall level of success in the Policy's implementation.

A periodic review of this policy will be undertaken to ensure any changes required to strengthen or update the policy are made in a timely manner.

9 References

Related documents	Legislation
Governance Rules Public Transparency Principles Privacy and Data Protection Policy	<i>Charter of Human Rights and Responsibilities Act 2006</i> <i>Freedom of Information Act 1982</i>

Community Engagement Policy Privacy Policy	<i>Local Government Act 2020</i> <i>Local Government Act 1989</i> <i>Equal Opportunity Act 2010</i>
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10 Document Control

C019 Public Transparency Policy		Policy Category	COUNCIL
Version Number	1.1	Policy Status	ADOPTED
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	August 2020	1.0	New policy required by <i>Local Government Act 2020</i>
	September 2023	1.1	Scheduled Policy Review