

CODE OF PRACTICE FOR ACCESS TO COUNCIL AND COMMITTEE MEETINGS AND DOCUMENTS

28 November 2023

Legislative

ACKNOWLEDGEMENT OF COUNTRY

The City of Adelaide acknowledges that we are located on the traditional Country of the Kaurna people of the Adelaide Plains and pays respect to Elders past, present and emerging.

We recognise and respect their cultural heritage, beliefs and relationship with the land. We also extend that respect to visitors of other Aboriginal Language Groups and other First Nations.

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1. STATEMENT

Section 92 of the *Local Government Act 1999* (SA) (the Act) requires Council to prepare and adopt a Code of Practice for Access to Meetings and Documents (the Code).

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 includes information relating to:

- access to the agenda for meetings;
- public access to meetings;
- the process to exclude the public from meetings;
- matters for which the Council, or a Council committee, can order that the public be excluded;
- how the Council will approach the use of the confidentiality provisions in the Local Government Act;
- public access to documents, including minutes;
- review of confidentiality orders;
- accountability and reporting to the community, and the availability of the Code of Practice; and
- grievances about the use of the Code of Practice by Council.

This Code was adopted by the Council on 28 November 2023.

2. SCOPE

The purpose of this Code is to clearly outline to the community how they may access Council and Committee meetings, agendas, and reports as well as information or briefing sessions. In addition, it outlines how public access to Council and Committee meetings or documents may be restricted.

The City of Adelaide supports the principle that the procedures to be observed at a meeting of Council or a Committee should contribute to open, transparent and informed decision-making and encourage appropriate community participation in the affairs of Council. Council recognises that on a limited number of occasions it may be necessary in the broader community interest to restrict public access to discussion or documents.

This Code should be read in conjunction with Council's Code of Practice for Meeting Procedures and Council's Public Transparency Policy.

3. COUNCIL AND COMMITTEE MEETINGS AND DOCUMENTS

3.1 Notice, Agenda and Reports

Public access to Council and Committee Agendas provides one of the main opportunities for the community to gain information about the business of Council and Committees. The following procedures apply to encourage public access to the Notice and Agenda:

- a) at least three Clear Days before a Council or Committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) must give written Notice of the meeting to all Council and Committee Members
- b) it will be placed on Council's website three Clear Days prior to the meeting

Various non-confidential documents from Council or Committee Meetings are to be available for inspection by members of the public on Council's public website as soon as practicable after the document or report is supplied to members of the Council, pursuant to section 84(5) of the Act. The Agenda may include a recommendation from the CEO that a document or report on a particular matter should be considered in confidence with the public to be excluded, in accordance with section 90 of the Act. Where this occurs, the CEO must specify the basis under section 90(3) where such an order could be made. Requests to access documents can be made under the *Freedom of Information Act 1991* (SA). Further information is available on Council's public website.

3.1.1 Meetings (including excluding the public)

Council and Committee meetings are open to the public and attendance is encouraged, except where Council or a Committee believes it is lawful and necessary to exclude the public from the meeting i.e., the need for confidentiality outweighs the general principle of open decision making.

The public may consider participation through the public forums or deputations in accordance with Council's Code of Practice for Meeting Procedures.

Council or a Committee will only discuss matters in confidence when it is considered necessary to do so and may order that the public be excluded in specific circumstances. Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of a particular matter at a meeting will require the identification of one or more of the grounds listed within section 90(3) of the Act.

Before a Council or Committee meeting orders that the public be excluded, the Council or Committee must resolve this. If this occurs, the Presiding Member will convey this to the public (and the grounds on which this will occur) and the public must leave the meeting. The Council or Committee can by inclusion within the resolution, permit a particular person or persons to remain in the meeting.

Where a person provides information to Council and requests that it be kept confidential the Council is not able to comply with this request unless the matter is one that falls within the ambit of section 90(3) of the Act. If this is the case, Council will then be in a position to consider the request on its merits.

3.1.2 Use of the confidentiality provisions

Council has developed a Public Transparency policy which provides a Public Interest Test, which will be applied when considering the use of confidentiality provisions. In accordance with the requirements of section 90(3) of the 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;*
- (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.*

The Act provides a definition of "personal affairs" which includes a person's:

- financial affairs

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- criminal records
- marital or other personal relationships
- personal qualities, attributes or health status
- 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.

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.

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

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

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:

- the grounds on which it was made;
- The basis on which the information or matter falls within the ambit of each confidentiality ground; and
- (if relevant,) why receipt, consideration or discussion of the information or matter in public would be contrary to the public interest.

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.

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).

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).

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.

In accordance with section 91(8) the Council or the Council committee must not make an order to prevent:

- 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
- 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
- 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
- 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.

Where keeping a document confidential is considered necessary, a resolution to this effect is required which shall include:

- the grounds for confidentiality; and
- 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
- (if applicable) whether the power to revoke the order will be delegated to an employee of the Council.
- 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.

3.1.3 Minutes

Minutes of a Council or Committee meeting must be publicly available on Council’s website within five days after the meeting. This excludes any resolutions where a confidential retention order has been made. If a decision to exclude the public is taken, Council or a Committee is required to record in the Minutes the making of the order and the grounds on which the resolution was made in the Minutes. This will also apply to any order to keep an associated document confidential in accordance with section 91(7) of the *Local Government Act*. These minutes must be available for a minimum period of one (1) month.

3.1.4 Confidential Retention Orders

Council or a Committee will only make an order that a document associated with a discussion from which the public are excluded will remain confidential if it is considered proper and necessary. A resolution to this effect will be carried by the meeting, immediately after considering the confidential item which will include the grounds for confidentiality and the duration of the order or circumstances in which the order will cease to apply or when the order must be

reviewed. When retaining documents as confidential, the retention period will be kept as short as is necessary.

Each item must be addressed separately and assessed against section 90(3) and section 91(7) of the *Local Government Act*. The Council or Committee can delegate the power to revoke an order made under section 91(7) and this can be included in the retention order, including any conditions associated with this delegation.

Documents will not be made available for public inspection while a confidential order under section 91(7) remains in place.

The CEO will maintain a register of the confidential retention orders and released confidential documents. This register will be published on Council's website. Released documents are available on Council's website.

The review of Confidentially Orders will be done in accordance with Council's Public Transparency Policy. A review of retention orders and confidential documents will ideally be conducted every six months to ensure that items are released to the public in accordance with the resolutions of Council, including detailing where an extension of a confidential retention order is required. The objective is that the information is to be made publicly available at the earliest opportunity.

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.

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. Each item must be addressed separately and assessed against section 90(3) and section 91(7). 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*.

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*.

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). Such delegation may be subject to conditions.

3.1.5 Reporting

Council will include in its Annual Report, a listing of the use of sections 90(2) and 91(7) of the *Local Government Act* by Council and Council committees as required by schedule 4 of the *Local Government Act*, and the *Local Government (General) Regulations 2013*.

Reporting will be consistent with the Accountability and Reporting provision in Council's Public Transparency Policy.

3.2 Information and CEO Briefing Sessions

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.

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.

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 Act. This will be done using the same Public Interest test prescribed in the Public Transparency Policy.

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:

- the place, date and time of the session;
- the matter discussed at the session; and
- whether or not the session was open to the public

3.3 Public Access to Documents

The 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 Act.

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).

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 can be located on Council's public website under Freedom of Information.

3.4 Grievance Procedure

Should a person be aggrieved about public access to either a meeting or a document then a request, in writing, can be lodged for consideration under Corporate Complaint handling Guidelines.

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A member of the public is also entitled to lodge a complaint with the South Australian Ombudsman if he or she has been aggrieved by a decision of Council to exclude the public from a meeting or has otherwise been prevented access to Council documents.

4. DEFINITIONS

For the purposes of this Code the following definitions apply:

Act	<i>Local Government Act 1999</i> (SA) (the Act)
Agenda	As defined in the Act means a list of items of business to be considered at a meeting.
CEO	Refers to the Chief Executive Officer (including their delegate) of the City of Adelaide
Clear Days	Means the number of calendar days between the giving of the Notice and the meeting. This is determined by excluding the day on which the Notice is given and the day of the meeting e.g., if Notice is given on a Friday for a following Tuesday meeting, then the Clear Days are the intervening Saturday, Sunday and Monday.
Code	Code of Practice - Access to Council Meetings and Documents
Committee	Refers to key (section 41) Council Committees established under the Act
Connect	Means able to hear and/or see the meeting, including via a live stream or recording of the meeting
Disconnect	Means remove the connection so as to be unable to hear and see the meeting
Electronic Means	Includes a telephone, computer or other device used for communication.
Live Stream	Means the transmission of audio and/or video from a meeting at the time that the meeting is occurring
Minutes	A written record of the proceedings at every meeting of the Council or a Council committee

Notice of a Meeting (Notice)	Pursuant to the Act in the case of an ordinary meeting or Council committee meeting, the CEO must give each member of the Council notice of the meeting at least three Clear Days before the date of the meeting. In the case of a special meeting or a special Council committee meeting, the CEO must give each member of Council notice of the meeting at least four hours before the commencement of the meeting. A Notice of a Meeting of the Council must be in writing, set out the date, time and place of the meeting, be signed by the CEO and contain or be accompanied by the Agenda for the meeting. For Council committee meetings, the Notice is not required to be signed by the CEO.
Personal Affairs	As defined in section 90(9) of the Act, being a person's financial affairs, criminal records, marital or other personal relationships, personal qualities, attributes or health status, or that person's employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person, but does not include the Personal Affairs of a body corporate
Presiding Member	Under the <i>Local Government (Procedure of Meetings) Regulations 2013</i> , this means the person who is the Presiding Member of a council or council committee (as the case may be) and includes any person who is presiding at a particular meeting
SAPOL	South Australia Police

5. LEGISLATIVE FRAMEWORK

The following legislation applies to this Code:

Freedom of Information Act 1991	Schedule 1, Section 9(1) & (2) of this Act specifies certain documents that are exempt and not exempt from disclosure to the public
<i>Local Government Act 1999</i> (SA)	<p>Sections 83 and 84 details the public notice requirements for Council meetings</p> <p>Section 90 provides a general duty for Council and Committee meetings to be conducted in a place open to the public.</p> <p>Section 90A sets out the requirements for information or briefing sessions.</p> <p>Section 91 provides for confidential documents and the release of and minutes relating to</p> <p>Section 92 requires a council to prepare and adopt a code of practice relating to the principles, policies and procedures that council will apply for the purposes of the operation of Parts 3 & 4.</p>
Local Government (General) Regulations 2013	Regulation 35 outlines the requirement for reporting in the Annual Report for Confidential Documents

Other references:

Council's documents including:

- a) Code of Practice for Meeting Procedures
- b) Public Transparency Policy
- c) Community Consultation Policy
- d) Fees and Charges Register
- e) Corporate Complaint Handling Guidelines

This Code is based on a model code developed by the Local Government Association.

6. AVAILABILITY

A copy of this Code of Practice will be made available on the Internet at [Strategies, plans & policies directory | City of Adelaide](#) 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 (see Council's fees and charges register for any relevant fee).

ADMINISTRATIVE

As part of Council's commitment to deliver the City of Adelaide Strategic Plan, services to the community and the provision of transparent information, all policy documents are reviewed as per legislative requirements or when there is no such provision a risk assessment approach is taken to guide the review timeframe.

This Policy document will be reviewed every **12 months** unless legislative or operational change occurs beforehand. The next review is required in **October 2024**.

Review history:

Trim Reference	Authorising Body	Date/ Decision ID	Description of Edits
<i>ACC2023/154410</i>	<i>Council</i>	<i>28 November 2023</i>	<i>Adoption of Code of Practice</i>

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