

Policy Title:	ACCEPTABLE REQUESTS GUIDELINES FOR COUNCILLORS AND EMPLOYEES, ACCESS TO INFORMATION AND CONFIDENTIALITY FOR COUNCILLORS POLICY
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OBJECTIVE:

The purpose of this Policy is to provide Acceptable Requests Guidelines for the Mayor, Councillors, Chief Executive Officer (CEO) and employees to assist in complying with the *Local Government Act 2009* (the Act) in respect to requests by Councillors for advice or information. The Policy also provides assistance in determining what might be considered confidential information and how this information should be handled.

The Guidelines aim to support Councillors in balancing the right and duty to inform the public and consult with constituents about Council business, with the interest Council has in preventing disclosure of confidential information.

INTRODUCTION:

Council operates in an environment of public accountability in which it seeks to inform the public of issues under consideration and the nature of decisions made by Council. Therefore, information should ordinarily be released to the public unless there are compelling reasons which indicate that this is not in the public interest.

At the same time, Council is conscious of the need to handle Council information in a way that promotes and maintains the public's trust and confidence in the integrity of the local government.

The purpose of these Guidelines is to promote good corporate governance in accordance with the local government principles by providing clear guidance for the Mayor, Councillors, CEO and employees to assist in complying with the Act.

ACCEPTABLE REQUESTS GUIDELINES

The Mayor and Councillors will from time to time require advice or assistance from the employees of Council to enable them to make a decision and effectively carry out their responsibilities.

Pursuant to s170A (6) of the Act, Council is required to adopt by resolution, Acceptable Requests Guidelines.

Accordingly, these Guidelines are intended to provide clear guidance to the Mayor, Councillors, CEO and employees about the way in which a Councillor may:

- A. ask a Council employee to provide “advice” to assist the Councillor to carry out his or her responsibilities under the Act (s170A(1)); and
- B. ask the CEO, subject to any limits prescribed under a regulation, to provide “information” that Council has access to, relating to the local government (s170A(2)).

Example of a limit prescribed under a regulation -

A regulation may prescribe the maximum cost to a local government of providing information to a councillor.

- C. access information stored within the electronic document management system

The underpinning principles and Councillors’ responsibilities under the Act are set out in Sections 4 and 12 respectively. The provisions of these Sections require Councillors to act in the interests of the residents of the local government area, to ensure effective service delivery and to be accountable to the community for the performance of the local government.

Section 13 of the Act sets out the responsibilities of local government employees including efficient and effective management of public resources, excellence in service delivery and provision of sound and impartial advice.

Through these provisions, the Act recognises that Councillors need to have access to current and relevant information about the local government to enable them to carry out their responsibilities.

A. Councillor Requests for Advice from Employees pursuant to s170A(1) of the Act**Councillors’ Responsibilities**

- 1. Communications between Councillors and employees must:
 - (a) be conducted in accordance with the Local Government Principles prescribed in s4(2) of the Act.
 - (b) be conducted in accordance with the Councillors’ Code of Conduct;
 - (c) comply with the law, Council policies, guidelines and procedures;
 - (d) be conducted in good faith; and
 - (e) be conducted in a respectful, reasonable and professional manner.

2. Councillors may request advice from any employee to assist in carrying out responsibilities under the Act, however the requested advice must be directed to and be consistent with the employee's level of responsibility and area of expertise.
3. To assist in supporting the acceptable request guidelines Councillors are encouraged in the first instance to seek advice from CEO, Director, relevant Executive Manager or delegated employees as determined by the CEO or Director.

Note: General community requests or complaints directed to Councillors should be lodged in accordance with established protocols and processes for dealing with those types of requests.

How a Councillor may seek advice from employees

Councillors' requests for advice shall:

- be made either verbally or in writing (eg letter, memo or email);
- identify the matter upon which the Councillor requires advice;
- outline or indicate the advice required;
- include liaison with the CEO or Director where a Councillor is unsure as to what information to request;
- be made with the assistance of the Councillor Support Officers if required, however when doing so, the Support Officers shall comply with the Acceptable Requests Guidelines as if it were the Councillor making the request directly; and
- if in writing forward a copy to the relevant delegated employee;
- Councillors must inform the CEO if they believe an employee has not appropriately responded to a request for advice.

Limitations to Councillors' requests for advice

Limitations include the following:

- not make requests where likely cost implications to Council cannot be publicly justified;
- any requests for advice are to be in accordance with relevant Council Policies.

Employees' Responsibilities

1. Communications by employees with Councillors must:
 - (a) be conducted in accordance with the Local Government Principles prescribed in s4(2) of the Act. Councillors may not direct, or attempt to direct an employee to do anything.
 - (b) be conducted in accordance with the Employee Code of Conduct;
 - (c) comply with the law, Council policies, guidelines and procedures;
 - (d) be conducted in good faith; and
 - (e) be conducted in a respectful, reasonable and professional manner.
2. When providing advice employees must:

- explain any issues in the advice which relate to confidentiality or other sensitive matters; and
 - if appropriate, provide any other advice necessary to place the advice being accessed, in context.
3. If an employee is not competent to respond with adequate knowledge and experience, and/or without functional responsibility for the matter, the employee shall refer the request to his/her supervisor.
 4. Employees shall consider the likely resource implications in responding to Councillors' requests for assistance or advice, and where the employee has concerns relating to the costs or other use of resources, he/she shall refer the request to the relevant Director or the CEO.
 5. Employees must keep records of advice given to Councillors as they would do when advising a member of the public and provide a copy to their relevant manager or supervisor. This should be recorded electronically in Council's DOCS Management System.
 6. The CEO or Director may authorise provision of any requested advice or information to all other Councillors if it is considered that such provision would be in the best interests of Council and/or the community or if the request relates to a matter currently under consideration by Council. In doing so, the CEO or Director will advise the relevant Councillor of their intention to provide the information to all Councillors.

B. Councillor Requests for Information from CEO pursuant to s170A (2) of the Act

Section 170A (2) of the Act provides that a Councillor may, subject to any limits prescribed under a regulation (eg *the maximum cost to a local government of providing information to a Councillor*), request the CEO to provide "Information" that the local government has access to, relating to the local government.

Information is defined as letters, reports/documents, facsimiles, attachments, tapes, emails, electronic media, and/or other forms of information including discussions during meetings.

Councillors' Responsibilities

In accessing information, Councillors are reminded of their obligations under s171 of the Act as follows:

Section 171 – Use of Information by Councillors

- (1) *A person who is, or has been, a councillor must not use information that was acquired as a councillor to –*
 - (a) *gain, directly or indirectly, a financial advantage for the person or someone else; or*
 - (b) *cause detriment to the local government.*

Maximum penalty – 100 penalty units or 2 years imprisonment.

- (2) *Subsection (1) does not apply to information that is lawfully available to the public.*
- (3) *A councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the local government.*

How a Councillor may seek Information from the CEO

Councillors' requests for Information from the CEO shall:

- be made in writing (eg letter, memo or email);
- identify the matter upon which the Councillor requires information;
- outline or indicate the information required;
- the above requirements do not apply to information that a Councillor has been given access rights to within Council's Records Management System and/or which may be publicly available.

Limitations to Councillors' Requests for Information

- Information that may not be requested includes:
 - (a) *information that is a record of the regional conduct review panel or the tribunal; or*
 - (b) *if disclosure of the information to the councillor would be contrary to an order of a court or tribunal; or*
 - (c) *that would be privileged from production in a legal proceeding on the ground of legal professional privilege (s170A(3)).*
- not make requests where likely cost implications to Council cannot be publicly justified.
- A request by a Councillor is of no effect if the request does not comply with the Acceptable Requests Guidelines (s170A(4)). S(4) does not apply to the Mayor or the Chairperson of a committee of Council if the request relates to the role of the Chairperson (s170A(5)).

CEO's Responsibilities

Upon receipt of a request for information from a Councillor, the CEO must determine if the Councillor has a right to access the information. If it is appropriate to provide access, the CEO must:

- make all reasonable endeavours to comply with a Councillor's request for information (s170A(8));
- ensure that the requesting Councillor is provided with access to all relevant information;
- if appropriate, provide any other information necessary to place the information being accessed, in context;

- explain any issues in the information which relate to confidentiality or other sensitive matters.
- if the request for information is excessive and the cost unable to be publicly justified the CEO will advise the Councillor. A Councillor may determine to reduce the scope of the requested information and/or seek Council resolution.

If it is not appropriate to provide access to the requested information, the CEO must advise the Councillor as to the reasons for this decision.

C. Councillor Access to electronic document management system

To assist a Councillor to search for information in carrying out his or her responsibilities under the Act, Councillors will be given access to the electronic document management system as a standard council user with permissions granted as per the all council staff security group.

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- (3) *A councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the local government.*

Councillors acknowledge that accessing a document may not provide the information in context and should seek clarification from the CEO to avoid an incorrect interpretation.

Limitations to Councillors' Requests for Information

Councillors will at times have access to information which by virtue of the contents should not be accessed by a Councillor. Before a document is accessed a Councillor should give consideration to the following potential implications:

- Conflict of interest
- Material personal interest
- Breach of trust
- Misuse of information
- Breach of the Code of Conduct for Councillors in Queensland
- Ethical and legal behaviour

CEO's Responsibilities

The CEO must ensure that Council complies with public record legislation by maintaining a compliant electronic document management system that protects the integrity of records as per Recordkeeping Management Policy.

Response Times to Requests for Advice or Information

1. Wherever possible, for routine requests where the information the Councillor is seeking is known to an employee or is readily available from a Council business system, the response will be provided over the phone or directly by email on the day.
2. All other requests will be responded to within five business days unless the matter is of a complex nature.
3. Where the matter is complex, eg it requires research and analysis or it requires input from several areas of Council, the employee concerned will provide an estimate of the length of time the request is likely to take. If that period of time elapses and the information is still not available, the employee will contact the Councillor, or Councillors' Support, and advise of the delay and the revised timeframe for provision of the information.
4. Wherever possible, complex matters should be responded to within 10 business days with an interim response provided within five business days. Where an employee feels they need more than 10 business days to respond, they should advise their Director so proper consideration can be given to operational and resourcing issues. The relevant Director will ensure the Mayor and Councillors' Support are kept up to date with progress and anticipated date of finalisation.
5. The Mayor's Office, at the sole discretion of the Mayor, may from time to time determine that a matter is urgent. Where the Mayor's Office classifies a matter as urgent, every endeavour will be made to provide the advice or information to the Mayor in the shortest possible timeframe. For urgent matters that cannot be resolved inside two business days, the employee will ensure that the relevant Director is made aware of the reasons for delay so they can be communicated to the Mayor and Councillors' Support.
6. Where a Councillor requires an urgent response on a matter, he/she shall go through the Mayor's Office with the request. If the Mayor agrees that the matter is urgent, the Mayor's Office may make a request for urgent advice or information on behalf of the Councillor and the request will be dealt with as if it was an urgent request from the Mayor.
7. Employees will always place a level of priority on requests for advice or information from Councillors. Where it is practical to do so, and will not result in service delivery issues for the community, employees will endeavour to meet or exceed these timeframes. Where there are genuine operational or resourcing reasons for delays, employees will be open and communicative with Councillors and/or the Mayor and Councillors' Support, and will provide alternative estimated timeframes so that expectations can be properly managed.

Breach of Acceptable Requests Guidelines

These Guidelines are considered to be a local government policy under s150K(1) of the Act and breaches of the Guidelines will be considered to be breaches of the Act.

If a Councillor asks for assistance, advice or information from an employee other than under these Guidelines, the employee must inform the relevant Director or the CEO about the request as soon as is practicable (s170A(4)).

An allegation of a breach of these Acceptable Requests Guidelines will be dealt with in accordance with s150P of the Act.

Variations to Acceptable Requests Guidelines

Amendments to the Acceptable Requests Guidelines, other than minor administrative amendments that do not alter the intent of the Guidelines, may only be made by a resolution of Council. All requests for minor administrative amendments must be directed through the CEO.

CONFIDENTIALITY FOR COUNCILLORS**Confidential Information**

It is accepted that Councillors will be in receipt of confidential information that may or may not be part of a formal Council meeting. It is the Councillors' responsibility to ensure that such information is treated confidentially, so as not to harm, prejudice or compromise the interests of Council or any individual or organisation, or enable any individual or organisation to gain a financial advantage.

The following types of information shall be deemed to be confidential unless or until Council resolves to the contrary in a particular instance:

- Commercial in confidence information — including where the release of information would affect a third party's competitive advantage; this is particularly relevant in a competitive tender situation.
- Information derived from government departments or Ministers that has been classified as confidential.
- Information of a personal nature or about personal affairs, for example the personal details of Councillors or Council staff and/or members of the public. Note: there are specific obligations under Privacy Act in relation to the use of personal information which must be adhered to in all dealings.
- Information relating to a property disposal or acquisition process where release of the information may prejudice Council.
- Financial and legal analysis where the disclosure of that information may compromise Council or someone else.
- Information that could result in action being taken against Council for defamation.

- Information involving legal advice to Council or a legal issue or a matter before the courts.
- Information that is expressly given to Councillors in confidence.
- Information examined or discussed at Councillor briefing sessions or provided to Councillors which is not publicly available, unless Council declares that such information (or part thereof) is not confidential.
- Information about:
 - the appointment, dismissal or discipline of employees
 - industrial matters affecting employees
 - Council's budget including rating concessions prior to its adoption
 - contracts proposed to be made by Council
 - starting or defending legal proceedings involving Council
 - any action to be taken by the local government under the Sustainable Planning Act 2009, including deciding applications made to it under that Act.

It is acknowledged that some of the above classes of information may need to be disclosed from time to time for legal proceedings or in accordance with the Right to Information Act 2009.

Consideration of Confidential Material - Council Meetings

Whilst endeavouring in the interests of public accountability to limit the number of matters which are considered in confidential sessions, Council acknowledges that it is appropriate to consider certain matters in closed meetings.

This policy deems that as a minimum (unless Council or committee resolves to the contrary):

- The CEO may make a declaration that information concerning a specific matter is to be treated as confidential to Council, and the information will remain confidential.
- An item on a Council or committee meeting agenda – and the information contained in the documentation or supporting material – that is declared confidential by the CEO is to remain confidential.
- If the Mayor or a Councillor in a meeting asks that a matter be treated as confidential, Council will formally resolve as to whether all information concerning the matter is confidential.
- If a meeting of a committee resolves that an item – and the information contained in the documentation or supporting material – is to be confidential it remains confidential.
- If Council or a committee exercises its powers under Section 275 of the *Local Government Regulation 2012* to close its meeting to members of the public, all information in relation to the matters discussed during that closed meeting or the closed portion of the meeting is confidential.
- Confidential information shall be clearly identified as confidential.

- Any information of a type deemed to be confidential is to be presumed by Councillors to be confidential to Council and must not be released without seeking advice from the CEO.
- If a Councillor has any doubt as to whether Council considers information to be confidential, the Councillor is to act on the assumption that Council does so intend until the doubt is resolved at a subsequent meeting of Council.

The following procedures will apply to the preparation of an agenda and material for consideration at meetings of Council:

- If it is considered by the CEO that Council should consider a matter in a closed meeting, the CEO will clearly indicate such recommendation on the agenda.
- The CEO will make a declaration that all information contained in the documentation and associated material is information confidential to Council.
- The CEO will ensure that the documentation and material is clearly marked as confidential.
- The reason for the recommendation will be set out in the material.

The following procedures will apply to a recommendation by the CEO that a matter be considered in a closed meeting:

- Council shall determine by resolution whether the matter is confidential or not for the purposes of declaring that a meeting should be a closed one.
- Upon moving that an issue be dealt with in a closed meeting, the mover must clearly state the reason for the motion.
- Council will resolve that:
 - the matter is to be considered in a closed meeting, and all information relating to that matter is confidential to Council, or
 - the matter will be considered in open session.

Information considered at a closed meeting of Council shall remain confidential unless or until Council resolves otherwise.

Use of Information by Councillors

Councillors are required to:

- exercise due care when handling or using information acquired in their role as a Councillor;
- acknowledge that there will be information that must be treated as confidential because to release it would reduce public trust and confidence in the integrity of Council;
- if uncertain, presume information is confidential, and seek advice from the CEO prior to any release of it;

- undertake not to disclose, and to use their best endeavours to prevent disclosure of, confidential information to any person or organisation, specifically:
 - avoid discussing confidential Council information with family, friends and business associates; and
 - ensure documents containing confidential information are properly safeguarded at all times – including materials stored at private or business premises.

Release of Confidential Information

Any release of confidential information for any purpose to any person or organisation (other than those who are entitled to the information, such as other Councillors or Council staff) is a breach of Section 171(3) of the Act. Release includes:

- orally telling any person about the information or any part of the information;
- providing the original or a copy of documentation or any part of the documentation that is marked confidential;
- paraphrasing – putting into your own words – any confidential information and providing that in writing or orally.

Breach of Confidential Information

A person may make a complaint about a breach by a Councillor of s171(3) of the Act and will be dealt with in accordance with s150P of the Act

PHILOSOPHY

Fraser Coast Regional Council recognises:

- the importance of setting a policy for Councillors to follow when they require advice or information relating to Council; and
- the important role of Councillors using Council information in a way that promotes and maintains the public's trust and confidence in the integrity of the Local Government.

DEFINITIONS:

For the purpose of this Policy, the following definitions apply:

Acceptable Requests Guidelines adopted by resolution of Council per s170A(6) of the Act.

Act means the *Local Government Act 2009*.

Advice means an opinion or recommendation offered as a guide to action, conduct etc.

CEO means the Chief Executive Officer.

Councillor Briefing Sessions are non-decision making forums convened by Councillors, the CEO and other Council officers that create an opportunity for Councillors and officers to discuss matters of proposed policy or other strategic or community sensitive issues, as well as providing a forum for Councillors to be made aware of issues of significance to the organisation and/or to the community.

Decision means a conclusion or resolution reached after consideration.

Information/Council Records include letters, reports/documents, facsimiles, attachments, tapes, emails, electronic media, and/or other forms of information including discussions during meetings.

HEAD OF POWER:

Local Government Act 2009 s170A, s171 and s171A

RELATED LEGISLATION:

Right to Information Act 2009

Public Records Act 2002

RELATED DOCUMENTS:

Code of Conduct for Councillors

Employees' Code of Conduct