

Councillor Access to Information and Interaction with Staff Policy

2024



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Further Document Information and Relationships

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| Related Legislation* | <i>Government Information (Public Access) Act 2009 Government Information (Public Access) Regulation 2009 Interpretation Act 1987 Local Government Act 1993 Privacy and Personal Information Protection Act 1998</i> |
| Related Policies | |
| Related Documents | |

**Note: Any reference to Legislation will be updated in the Policy as required. See website <http://www.legislation.nsw.gov.au/> for current Acts, Regulations and Environmental Planning Instruments.*

1. POLICY OBJECTIVE

The objective of the Councillor Access to Information and Interaction with Staff Policy is to:

- (a) Ensure the Councillors have access to all information necessary for them to exercise their statutory role as a member of the governing body of Liverpool Plains Shire Council;
- (b) Ensure the Councillors receive advice to help in the performance of their civic duty in an orderly and regulated manner; and
- (c) Provide a documented process on how the Councillors can access Council records and information and interact with Council staff.

2. DEFINITIONS

| Term | Definition |
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| Council staff | Employees, contractors, consultants and volunteers engaged by Liverpool Plains Shire Council. |
| Councillors | The elected representatives who, pursuant to section 222 of the <i>Local Government Act 1993</i> , comprise of the governing body of Liverpool Plains Shire Council. |
| General Manager | The General Manager of Liverpool Plains Shire Council appointed pursuant to section 334 of the <i>Local Government Act 1993</i> . |
| Legal advice | Advice or formal opinion prepared by a legal provider. |
| Legal provider | A provider of legal services external to Council, including solicitors, barristers and legal firms. |
| Open access information | Information listed in Schedule 1 of the <i>Government Information (Public Access) Regulation 2009</i> that a member of the public could access by application under Council's Agency Information Guide. |
| Operational advice | Requests regarding routine services provided by Council. |
| Ordinary day | The reckoning of time as set out in section 36 of the <i>Interpretation Act 1987</i> , which excludes a Saturday, a Sunday, a public holiday or a bank holiday being included in the calculation of the period of a day or number of days in relation to notice to be given under the provisions the Code of Conduct. |
| Public Officer | The member of Council staff designated by the General Manager as the Public Officer of Liverpool Plains Shire Council pursuant to section 342 of the <i>Local Government Act 1993</i> . |
| Strategic advice | Requests regarding matters that relate to Council's Intergrated Planning and Reporting framework, long-term planning, policy direction and significant projects. |
| Response | An answer to a request or a proposed course of action (not an acknowledgment) by email, facsimile or letter. |

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| Third party advice | Written advice obtained by Council from a third party, excluding legal providers. Such advice includes, but is not limited to, consultants' reports and advice from Government agencies. |
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3. POLICY

Liverpool Plains Shire Council (Council) acknowledges that its Councillors require access to Council information and staff in order for them to exercise the functions of their civic office under the *Local Government Act 1993* (the Local Government Act).

The Act also requires the Councillors and staff to act honestly and responsibly when carrying out their functions, not taking advantage of their position to unduly influence other Councillors or staff in the performance of their duties or functions or use their position to obtain, either directly or indirectly, an advantage for them or any other person.

Access to a Council file, information or staff member can only be provided in accordance with this policy to ensure that access is obtained in ways that are legal and appropriate. The types of requests, authorisation requirements, and the manner of responses, restrictions and record keeping requirements are specified in *Appendix A*.

3.1. Access to and Interaction with Council Staff

- (a) Councillors shall only make requests of Council staff that are relevant to the Councillor's civic duties, as detailed in *Appendix B*. If a Councillor requires information, action or advice in relation to a personal or private matter, they must follow the same process as a member of the public.
- (b) If a staff member receives a request from a Councillor which they consider may not be relevant to the Councillor's civic duties, the staff member may require the Councillor to demonstrate how the request relates to the Councillor's civic duties. If the staff member is not satisfied that the request relates to the Councillor's civic duties, the staff member is entitled to refuse to action the request or advise the Councillor of the normal process for members of the public to make such requests.

3.2. Access to and Interaction with Audit

- (a) Consistent with clause 7.2 of the Code of Conduct, Councillors may contact Council's external Auditor or the Chair of the Audit, Risk and Improvement Committee ("ARIC") to provide information reasonably necessary for the external Auditor or the ARIC to effectively perform their functions.

3.3. Rights to Information

- (a) Councillors have a right to access records and information held by the Council, provided that the information is necessary to enable them to carry out their official functions effectively. As such, the Mayor and Councillors can access information which:

- i. Has been identified as open access information under Schedule 1 of the *Government Information (Public Access) Regulation 2009*; or
 - ii. Relates to a matter currently before the Council for determination. (Note, however, that the provision of access to legal advice is dealt with in accordance with clause 5.5 of this Policy.)
- (b) Councillors shall direct requests for information to the appropriate staff member, as identified in *Appendix B*. The staff member shall provide the information requested to the Councillor in a full and timely manner, sufficient to allow the Councillor to make sure of the information in the relevant official function. Consistent with clause 8.4 of the Code of Conduct, the staff member must also make the information available to any other Councillor who requests it.

3.4. Access to Third Party Advice

- (a) In relation to third party advice relevant to a matter currently before the Council for determination, the following principles apply:
- i. A copy of such advice obtained by Council in relation to the subject matter shall be provided to all Councillors no less than three business days prior to the meeting at which the matter is to be determined to allow Councillors to read and understand the advice;
 - ii. Councillors acknowledge that such advice may be confidential and public disclosure may be detrimental to Council's interests. Accordingly, where the advice is provided to Councillors on a confidential basis; Councillors agree not to disclose the advice to any other person. Failure to abide by this clause shall constitute a breach of Council's Code of Conduct and will result in action being taken against any Councillor found to have breached confidentiality without proper authority.
 - iii. Where such advice relates to matters which are to be determined under delegated authority or do not otherwise require referral to Council for determination, then the requirements of this clause shall not apply; and

3.5. Access to Legal Advice

- (a) Legal advice attracts legal privilege. Legal privilege may be waived or lost by inadvertent or actual disclosure of the advice or the existence of the advice to a third party. Communications between Council and its external legal providers must not be disclosed to anyone outside Council.
- (b) As a general rule, Council is entitled to claim legal professional privilege for any communications between legal providers and members of Council staff, provided those communications are for the dominant purpose of seeking or receiving legal advice or

services, or where those communications relate to litigation that has already commenced or is anticipated.

- (c) Councillors will be given access to legal advice relevant to a matter before Council upon which a decision is to be made, but may not retain written copies of such advice. All copies of advice circulated during a briefing session or Council meeting must be returned to the General Manager, the Public Officer, or the General Manager's delegate.

3.6. Constituent enquiries

- (a) Where a Councillor receives an enquiry from a constituent with regard to an operational matter, the enquiry should be referred to the General Manager or the Executive Support Officer, who will then ensure the enquiry is processed through Council's customer action request system.
- (b) The General Manager or Executive Support Officer will ensure that the Councillor is notified when the matter has been resolved and the customer notified of the resolution.

3.7. Restrictions on Councillors' Requests for Information under this Policy

- (a) Notwithstanding the above, a Councillor who has declared to have a conflict of interest regarding a matter, and is therefore precluded from participating in the consideration of the matter under the Code of Conduct, is not entitled to request access to information regarding the matter in question under the provisions of this Policy. In that case, the Councillor will be required to request to access the information in accordance with one of the methods provided by the *Government Information (Public Access) Act 2009* ("GIPA Act").
- (b) Councillors who have a private interest only in Council information are also required to request access to the information in accordance with the GIPA Act.
- (c) Formal and informal GIPA requests lodged by Councillors will be determined in accordance with Council's Access to Information Policy. The Councillor as the applicant will have the same rights under the GIPA Act as any other member of the public.
- (d) If a matter is not currently before the Council, but the Councillor is considering bringing the matter before Council in the future, the Councillor may also request access to the information by way of a Notice of Motion.

3.8. Councillors' Responsibility to Use Information Appropriately

- (a) Once information has been provided in response to a Councillor's request, the Councillor must ensure that they comply with their responsibility under section 439 of the Local Government Act to act honestly and exercise a reasonable degree of care and diligence, by properly examining and considering the information.

- (b) Councillors must not use information provided to them in their official capacity for private purposes, or to seek to obtain any financial benefit or other advantage for themselves or any other person or body.
- (c) Councillors do not have the authority to release information to the public on behalf of Council. Councillors must not circumvent the provisions of the GIPA Act by providing access to information directly to members of the public. Members of the public wishing to access Council information should be advised by the Councillor to contact Council staff for assistance with lodging a GIPA request.
- (d) When dealing with personal information of other people, Councillors must abide by all relevant legislation, including Council's Privacy Management Plan, the *Privacy and Personal Information Act 1998*, the *Health Records and Information Privacy Act 2002*, and the Privacy Code of Practice for Local Government.
- (e) Councillors are not permitted to destroy, alter, or dispose of original versions of Council information or records. Councillor enquiries about alteration or disposal of Council records must be directed to Council's General Manager or Public Officer, who will consult with Council's Records Officer regarding the requirements of the State Records Act 1998.

3.9. Recordkeeping Responsibilities

- (a) All Councillors and staff are required to abide by the requirements of the *State Records Act 1998* and Council's records management policies and procedures. All requests for information and advice made by Councillors, and the responses to those requests, must be treated as Council records and managed in accordance with the legislation.
- (b) Therefore, it is recommended that Councillors put all requests for information or advice in writing, for the request to be stored appropriately in Council's Records Management System.
- (c) Staff handling Councillor enquiries are required to document their interactions with Councillors, including making records of telephone calls and email exchanges, in accordance with the legislation.

3.10. Refusal to Provide Information

- (a) If the staff member responsible for handling the request has decided that the Councillor's request to access the information should be refused, in whole or in part, the officer must provide a justification of the decision to the Councillor in writing, outlining the reason(s) for the decision and what factors were taken into account when making the decision (e.g. legal advice, privacy requirements, relevance to the Councillor's official function).

3.11. Inappropriate Interactions

- (a) Consistent with clause 7.6 of the Code of Conduct, the following interactions are considered inappropriate for the purposes of this Policy:
- i. Councillors approaching staff and staff organisations to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters.
 - ii. Council staff approaching Councillors to discuss individual or operational staff matters (other than matters relating to broader workforce policy), grievances, workplace investigations and disciplinary matters
 - iii. Council staff refusing to give information that is available to other Councillors to a particular Councillor;
 - iv. Councillors who have lodged an application with the council, discussing the matter with Council staff in staff-only areas of the Council
 - v. Councillors being overbearing or threatening to Council staff.
 - vi. Council staff being overbearing or threatening to Councillors.
 - vii. Councillors making personal attacks on council staff or engaging in conduct towards staff that would be contrary to the general conduct provisions in Part 3 of the Code of Conduct in public forums, including social media.
 - viii. Councillors directing or pressuring Council staff in the performance of their work, or recommendations they should make.
 - ix. Council staff providing ad hoc advice to Councillors without recording or documenting the interaction as they would if the advice was provided to a member of the community.
 - x. Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by the Council associated with current or proposed legal proceedings unless permitted to do so by Council's General Manager or, in the case of the Mayor, unless they are exercising their functions under section 226 of the Local Government Act.

3.12. Breaches

- (a) Breaches of this Policy shall be treated as breaches of the Code of Conduct, and dealt with in accordance with the *Procedures for the Administration of the Code of Conduct*.

APPENDICES

Appendix A: Interactions Between Councillors and Council Staff

| Request Type | From Whom to Gain Approval | How Information is to be Requested | How Information is to be Provided | Restrictions to Information | Recordkeeping Requirements |
|--|---------------------------------|--|---|--|---|
| Access to Documents | General Manager, Public Officer | <p>It is the Councillor's choice whether a request is submitted in writing or made verbally.</p> <p>The General Manager and Public Officer are required to keep a file note of verbal requests when appropriate.</p> | <p>Inspection of documents will only be permitted on the premises. Copies of publicly available documents will be permitted.</p> <p>Documents that are not publicly available can be inspected but not copied. The General Manager has overriding discretion.</p> | <p>There are no specific restrictions. However, the General Manager and the Public Officer have discretion to refuse a request on legitimate grounds. If access is refused, a notice of motion, the GIPA Act and the Agency Information Guide are the alternative forms of access.</p> | <p>The Council staff member must keep a record of all transactions pertaining to the request.</p> |
| Operational or Strategic Advice | General Manager, Directors. | <p>It is the Councillor's choice whether a request is submitted in writing or made verbally.</p> <p>Council Officers are required to keep a file note of verbal</p> | <p>The response will be provided verbally, memo or email. The timeframe for a response will be five business days unless deemed urgent.</p> | <p>There are no specific restrictions. However the General Manager and Directors have discretion to refuse a request on legitimate grounds.</p> | <p>The Council Officer must keep a record of all transactions pertaining to the request.</p> |

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| | | requests when appropriate. | | If access is refused, a Notice of Motion or a Question with Notice is the alternative forms of access. | |
| Councillor Support Requests | General Manager, Executive Services Staff | It is the Mayor or Councillor's choice whether their request is submitted in writing or made verbally. Council Officers are required to keep a file note of verbal requests when appropriate. | The timeframe for a response will be five business days unless deemed urgent . | The administrative assistance must be in accordance with the Councillor Expenses and Facilities Policy. | The general principle is to keep a record of all transactions. However, this is not required if it is only a routine matter. |

Appendix B: Statutory Provisions Relating to the Roles of Councillors

1 The Governing Body (section 222, *Local Government Act 1993*)

The elected representatives, called "Councillors," comprise the governing body of the council.

2 Role of Governing Body (section 223, *Local Government Act 1993*)

The role of the governing body is as follows:

- (a) to direct and control the affairs of the council in accordance with this Act,
- (b) to provide effective civic leadership to the local community,
- (c) to ensure as far as possible the financial sustainability of the council,
- (d) to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council,
- (e) to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council,
- (f) to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area,
- (g) to keep under review the performance of the council, including service delivery,
- (h) to make decisions necessary for the proper exercise of the council's regulatory functions,
- (i) to determine the process for appointment of the General Manager by the council and to monitor the General Manager's performance,
- (j) to determine the senior staff positions within the organisation structure of the council,
- (k) to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,
- (l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately.

3 Role of Mayor (s. 226, *Local Government Act 1993*)

The role of the Mayor is as follows:

- (a) to be the leader of the council and a leader in the local community,
- (b) to advance community cohesion and promote civic awareness,
- (c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,



- (d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,
- (e) to preside at meetings of the council,
- (f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,
- (g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council,
- (h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,
- (i) to promote partnerships between the council and key stakeholders,
- (j) to advise, consult with and provide strategic direction to the General Manager in relation to the implementation of the strategic plans and policies of the council,
- (k) in conjunction with the General Manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,
- (l) to carry out the civic and ceremonial functions of the Mayoral office,
- (m) to represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- (n) in consultation with the Councillors, to lead performance appraisals of the General Manager,
- (o) to exercise any other functions of the council that the council determines.

4 Role of a Councillor (section 232(1), *Local Government Act 1993*)

The role of a Councillor is as follows:

- (a) to be an active and contributing member of the governing body,
- (b) to make considered and well informed decisions as a member of the governing body,
- (c) to participate in the development of the integrated planning and reporting framework,
- (d) to represent the collective interests of residents, ratepayers and the local community,
- (e) to facilitate communication between the local community and the governing body,
- (f) to uphold and represent accurately the policies and decisions of the governing body,
- (g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a Councillor.