

# Public Transparency Policy

Policy Number:	TBA 2020/06	Directorate:	City Development – Finance and Governance
Approval by:	Council	Responsible Officer:	Manager Governance
Approval Date:	31 August 2020	Version Number:	1
Review Date:	31 August 2023		

## 1. Purpose

This purpose of this Policy is to:

- 1.1 give effect to the Public Transparency Principles set out in the *Local Government Act 2020 (the Act)* and formalise Council's support for transparency in its decision making processes;
- 1.2 describe the ways in which Council Information will be made publicly available in a easily accessible, impartial and timely manner;
- 1.3 specify which Council Information will be made publicly available;
- 1.4 describe the categories of Council Information that may be made unavailable to the public;
- 1.5 provide greater transparency, clarity and awareness in Council's decision making process; and
- 1.6 increase community confidence and trust in Council's decision making process.

This Policy is adopted under section 57 of the Act and gives effect to the Public Transparency Principles outlined in section 58 of the Act.

## 2. Context

- 2.1 Knox Council is committed to democratic and transparent governance in its decision making, including by facilitating access to all relevant information needed to collaborate, cooperate and make decisions effectively.
- 2.2 Knox City Council will champion the Public Transparency Principles through its leadership and decision making in a proactive manner, in accordance with the Act and Council's Governance Rules.

## 3. Scope

This Policy applies to Councillors, Officers, Contractors and Volunteers.

- 3.1 Officers are responsible for giving effect to Public Transparency Principles.
- 3.2 Senior Officers are to champion behaviors which foster transparency and drive Public Transparency Principles through policy, process and leadership.
- 3.3 Senior Officers are to develop and implement processes to embed relevant principles of public transparency through good governance and community engagement in their areas of responsibility.
- 3.4 All Officers are to assist in facilitating access to Council Information in line with Councils objectives under relevant legislation and this Policy.
- 3.5 Contractors must respond to requests for information and facilitate provision of information in accordance with their own policies and procedures, and generally in alignment with this Policy.
- 3.6 Volunteers must respond to requests for information and facilitate provision of information in accordance with this Policy.

## 4. References

### 4.1 Community & Council Plan 2017-2021

- Strategy 8.1 Build, strengthen and promote good governance practices across government and community organisations
- Strategy 8.2 Enable the community to participate in a wide range of engagement activities

### 4.2 Relevant Legislation

- Local Government Act 2020
- Freedom of Information Act 1982
- Charter of Human Rights and Responsibilities Act 2006
- Privacy and Data Protection Act 2014
- Equal Opportunity Act 2010

### 4.3 Related Council Policies and Procedures

- Governance Rules
- Councillor Code of Conduct

#### 4.4 Charter of Human Rights

This Policy has been assessed against the *Charter of Human Rights and Responsibilities Act 2006* as being consistent with that Act and in particular, as promoting the rights of members of the Community, particularly

- 4.4.1 not to have their privacy interfered with (section 13); and
- 4.4.2 take part in public life (section 18), by having the opportunity to:
  - a) participate in the conduct of Council’s affairs; and
  - b) have access to Council and Council Information.

## 5. Definitions

The following words and phrases apply in the Policy

“Act”	means the <i>Local Government Act 2020 (the Act)</i> .
“Chief Executive Officer”	includes an Acting Chief Executive Officer.
“Closed Meeting”	means a meeting that is closed to the public.
‘Community’	means the residents and ratepayers of, and visitors to, the Municipal District and may, depending on the context, refer to all of those people or to particular subsets of those people.
“Confidential Information”	means confidential information as defined in section 3(1) of the Act.
“Council”	means Knox City Council, whether constituted before or after the commencement of this Policy.
“Council Information”	means all documents and other information held by Council.
Council Offices”	means the Council offices located at 511 Burwood Highway, Wantirna South.
“Council Website”	means Council’s website at <a href="http://knox.vic.gov.au">knox.vic.gov.au</a> .
“Governance Rules”	means the governance rules adopted by Knox Council under section 60 of the Act, as amended from time to time.
“Health Information”	means health information as detailed in section 3(1) of the <i>Health Records Act 2001</i> .
“Individual(s)”	means a resident(s) of the Knox Municipality.
“Meeting”	means a meeting of Council or a Delegated Committee.
“District”	Means the municipal district of Council.

“Officer”	Means a member of Council staff, including the Chief Executive Officer.
“Personal Information”	means personal information as defined in section 3(1) of the <i>Privacy and Data Protection Act 2014</i> .
“Public Transparency Principles”	means the Public Transparency Principles set out in section 58 of the Act and reproduced in Part 6 of this Policy
“Requestor”	means a person making a request to access Council Information under and in accordance with this Policy

## Council Policy

### 6. Public Transparency Principles

6.1 The Public Transparency Principles prescribed in section 58 of the Act are as follows:

6.1.1 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.

6.1.2 Council Information must be publicly available, unless:

- a) the information is confidential by virtue of the Act or any other Act; or
- b) public availability of the information would be contrary to the public interest.

6.1.3 Council Information must be understandable and accessible to members of the District.

6.1.4 Public awareness of the availability of Council Information must be facilitated.

6.2 Council will give effect to and implement the Public Transparency Principles in accordance with this Policy and the Act.

### 7. Council Decision Making Processes

7.1 Council will ensure that its decision making processes are transparent and open so that the Community is provided with an opportunity for meaningful engagement with Council and its decision making processes.

7.2 Without limiting the generality of clause 7.1, Council’s decision making processes will:

7.2.1 be conducted in accordance with the Act and the Governance Rules;

7.2.2 unless considering Confidential Information, be conducted in a forum that is open to, and accessible by, the Community; and

7.2.3 be informed by the:

a) views of those members of the Community whose rights and interests will be directly affected by the decision; and

b) responses, if any, to any process of community engagement conducted by Council in respect of the decision, whether in accordance with its Community Engagement Policy or otherwise.

7.3 Further details of Council's decision making process can be found in the Governance Rules.

## **8. Availability of Council Information**

8.1 All Council Information will be made available to the public, unless the:

8.1.1 Council Information is classed as Confidential Information; or

8.1.2 release of the Council Information is assessed by the Chief Executive Officer or nominee as being contrary to the public interest.

8.2 A list of the categories of Council Information which will generally, subject to this Policy, be made available either on the Council Website and at the Council Offices.

For the purposes of clause 8.1 of this Policy, the following Council Information will generally, and subject to this Policy, be made available either on the Council Website or on request by a member of the Community.

### **Documents include:**

- Plans and Reports adopted by Council, including but not limited to the Council Plan, Workforce Plan, Financial Plan, Asset Plan, Revenue and Rating Plan, Emergency Management Plan, Road Management Plan;
- Councillor Code of Conduct;
- Council Policies;
- Adopted Budgets;
- Annual Reports;
- Local Laws;
- Project and Service Plans;
- Service Agreements and Contracts;
- Leases and Licences; and
- relevant technical reports and / or research that inform Council's decision-making.

**Process information such as:**

- application processes for approvals, permits, grants, access to Council services;
- decision-making processes;
- Guidelines and Manuals;
- Community Engagement Processes; and
- Complaints Handling Processes.

**The following Council Information will be available on Council's website:**

- Council Meeting Agendas and Minutes;
- Audit and Risk Committee Charter;
- Terms of Reference for Delegated Committees;
- Delegated Committee's Meeting Agendas and Minutes;
- Terms of Reference for Advisory Committees;
- Advisory Committee Meeting Agendas and Minutes
- Gift, Benefits and Hospitality Registers for Councillors and Council Staff;
- Travel Registers for Councillors and Council Staff;
- Registers of Conflicts of Interest disclosed by Councillors and Council Staff;
- Registers of Leases entered into by Council;
- Register of Donations and Grants by Council;
- Register of Delegations;
- Register of Authorised Officers;
- Register of Election Campaign Donations;
- Summary of Personal Interests under section 135(1) of the Act; and
- any other Registers or Records as required by the Act or any other Act.

8.3 Under various other Acts administered by Council, the following information will be made available upon request:

- Register of Planning Permits
- Register of Planning Applications on Advertising
- Copy of Planning Permits and Endorsed Plans (by application, charges will apply)
- Register of Building Permits, Occupancy Permits and Temporary Approvals
- Copies of Building Permits, plans and documentation (by application, charges will apply)
- Register of Animal Registrations
- Copy of the final Delegates Report prepared for a finalised planning permit application
- Register of Public Roads

## 9. Publications and Social Media

9.1 Council publishes a range of newsletters, reports and handbooks for residents, businesses and visitors to the Municipal District. These publications are available on the Council Website, at the Council Offices or on request to Council.

9.2 Council will use its social media channels to publish and promote Council Information, such as Council Meetings and community consultation, to encourage community engagement and transparency.

## 10. Accessibility of Council Information

10.1 Council Information will be made available on the Council Website, at the Council Offices and / or upon request to Officers or Council's Freedom of Information Officer.

10.2 Council will to the extent possible, facilitate access to Council Information by:

10.2.1 making Council Information available in accordance with this Policy;

10.2.2 endeavouring to make requests for Council Information accessible in various formats, including electronically, hard copy, website, by inspection, or by specific request and arrangement;

10.2.3 endeavouring to convert Council Information to different accessible formats where necessary for members of the Community for whom:

a) English is their second language; or

b) disability requires an alternative means of access to be provided.

10.3 Where a request is made for access to Council Information that is not on the Council Website or otherwise available at the Council Offices, the Chief Executive Officer or nominee will:

10.3.1 review the request;

- 10.3.2 assess whether the Council Information requested is Confidential Information, or its release would be contrary to the public interest; and
- 10.3.3 notify the Requestor of the outcome of that assessment.
- 10.4 If the Council Information requested is assessed under clause 10.2 not being Confidential Information, or its release is assessed as not being contrary to the public interest, the Council Information will be provided to the Requestor.
- 10.5 The Council Information will be provided to the Requestor by email unless the:
  - 10.5.1 Requestor seeks access in a different form, including by reference to the matters stated in clause 10.2.3 in which case the Council Information will be provided in that form, unless it is impracticable to do so; or
  - 10.5.2 Chief Executive Officer or nominee, having regard to the nature of the Council Information requested, determines that the Council Information should be provided in a different form, such as by inspection.
- 10.6 Council will provide such support to the Requestor as it considers reasonable to ensure that the Council Information provided is understood by them.
- 10.7 If, under clause 10.2 the Council Information requested is assessed as being Confidential Information, or its release is assessed as being contrary to the public interest, the Requestor will be advised:
  - 10.7.1 that the request has been denied;
  - 10.7.2 of the reasons for the request being denied; and
  - 10.7.3 of alternative mechanisms by which they may seek access to the Council Information, such as making a request made under the *Freedom of Information Act 1982*).
- 10.8 Council publishes a statement under the Freedom of Information Act 1982, available on Council's website.
- 10.9 Any request for access to Council Information by way of an alternative mechanism under clause 10.2.3 will be assessed according to the process applicable to it.
- 10.10 Where:
  - 10.10.1 Council Information requested is assessed under clause 10.2 as being Confidential Information, or its release is assessed as being contrary to the public interest; but
  - 10.10.2 It is practicable for that Council Information to be provided with deletions so that it is suitable for release to the Requestor; and
  - 10.10.3 the Chief Executive Officer or nominee believes that the Requestor would want the Council Information in that format,



the Council Information will be provided in that format.

**11. Council Information that is Not Available**

Some Council information may not be made publicly available. This will occur if the information is Confidential Information, or its release would be contrary to the public interest.

**11.1 Confidential Information**

**11.1.1** What constitutes Confidential Information is set out in section 3(1) of the Act and includes information within the following categories:

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

Type	Description
Internal arbitration information	Information provided to, or produced by, an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons.
Councillor Conduct Panel Information	Information: <ul style="list-style-type: none"> <li>• provided to, or produced by, a Principal Councillor Conduct Registrar, for the purposes of an application to form a Councillor Conduct Panel; or</li> <li>• provided to, or produced by, a Councillor Conduct Panel for the purposes of conducting a hearing, other than a decision or reasons for a decision; or</li> <li>• comprising any part of a statement of reasons or other document under the control of a Councillor Conduct Panel that the Councillor Conduct Panel determines contains confidential information.</li> </ul>
Confidential information under the 1989 Act	Information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i> .

11.1.2 In the interests of transparency, Council may, by resolution, determine to release information to the public even though it is Confidential Information.

11.1.3 A decision under clause 11.1.2 will generally only be made if Council, on the advice of the Chief Executive Officer, is satisfied that releasing the Confidential Information would not:

- a) be inconsistent with any legal or contractual obligation;
- b) cause disadvantage or harm to any person, including Council; and
- c) otherwise be contrary to the public interest.

**11.2 Contrary to the Public Interest**

11.2.1 Council Information will not be made publicly available if doing so would be contrary to the public interest.

11.2.2 When assessing whether making certain Council Information publicly available would be contrary to the public interest, the Chief Executive Officer or nominee will have regard to, among other things:

- a) the sensitivity of the Council Information;
- b) if harm to the community, being individuals or members of the public, is likely to be created by releasing Council Information; potential harm to Council will only be a factor if it

could involve a loss of public funds or it prevents Council from performing its statutory functions;

c) whether the Council Information comprises an internal working document, a draft document, or otherwise is no longer a current document; whose release may mislead the public; and

d) any adverse effect that releasing the Council Information would have on the effectiveness of Council's decision-making processes.

11.2.3 Without limiting clause 11.2.2, factors that might lead to a decision that the release of Council Information is contrary to the public interest might include whether release would be likely to:

a) disclose Personal Information or Health Information;

b) disclose information or opinions of a preliminary nature such that they might:

(i) mislead the Community with respect to Council's position on a matter; or

(ii) have a substantial adverse effect on the economy of the Municipal District;

c) prejudice discussions or negotiations between Council and any other party, in relation to a contract, legal proceedings or any other matter;

d) impair or otherwise impact on:

(i) Council's ability to obtain information in future that is similar in nature to the Council Information;

(ii) negotiations with respect to employment arrangements for Officers; or

(iii) defence, prosecution and settlement of legal proceedings; or

e) impact on the reasonable allocation of Council's resources, including in responding to requests for Council Information that are assessed by the Chief Executive Officer as being frivolous, vexatious or repetitious in nature.

## **12. Public Awareness of Availability of Council Information**

Council will ensure public awareness of this Policy and the availability of Council Information by:

12.1 publishing this Policy on the Council Website;

12.2 where appropriate promoting awareness of access through various Council social media channels;

12.3 making this Policy available for public inspection at Council's offices;

- 12.4 converting this Policy to such accessible formats, having regard to clause 10.2.3 as the Chief Executive Officer or nominee determines; and
- 12.5 ensuring that all Officers:
  - 12.5.1 are aware of this Policy and its effect; and
  - 12.5.1 direct members of the Community to this Policy when access to Council Information is sought.

**13. Access to information by Councillors**

- 13.1 Councillors may request access to Council information by providing a written request to the Chief Executive Officer, relevant Director, relevant Manager or the Manager Governance.
- 13.2 When making a request for information, Councillors should draft their request carefully and precisely detail the information, or the nature of the information sought. It is expected that Councillors will act reasonably in making a request for information.
- 13.3 Councillors have a right to access Council information that is reasonably necessary for exercising their functions as prescribed under section 28 of the Act, being
  - (a) to participate in the decision making of the Council; and
  - (b) to represent the interests of the municipal community in that decision making; and
  - (c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan
- 13.4 When dealing with a request by a Councillor for information, the Chief Executive Officer must act reasonably. The Chief Executive Officer shall have discretion in the format that the requested information is provided to the Councillor. If a request is to be reasonably denied, reasons for the refusal must be identified and provided to that Councillor.
- 13.5 Any information that is provided to a particular Councillor in the pursuit of their civic duties should also be made available to any other Councillor who requests it.
- 13.6 Councillors are unable to use information provided for any purposes that are unrelated to their functions and duties as a Councillor, or which may cause detriment to Council.
- 13.7 Councillors may also apply for information in a documentary form by making a formal request under the *Freedom of Information Act 1982*.

**14. Copyright**

- 14.1 The intellectual property of some Council Information available for public access belongs to third parties and is the subject of copyright. Access to this information is provided to members of the public in accordance with relevant legislation. Copyright laws will apply to

this information and Requestors are advised to seek the consent of the copyright owner before considering reproducing the information in any way.

## **15. Responsibility for this Policy**

15.1 The Chief Executive Officer is responsible for the application and operation of this Policy.

15.2 The Chief Executive Officer may, from time to time, authorise another Officer or Officers, known as a nominee under this Policy, to fulfil any of the Chief Executive Officer's functions and duties under this Policy.

15.3 Where another Officer is or other Officers are authorised under this Policy, any reference in this Policy to the Chief Executive Officer is to be read as a reference to that Officer or those Officers.

## **16. Dissatisfaction with the Application of this Policy**

16.1 If a Requestor is dissatisfied with Council's application of, or believes that Council has acted inconsistently with, this Policy, they can report their dissatisfaction to Council's Manager Governance by:

email to [knoxcc@knox.vic.gov.au](mailto:knoxcc@knox.vic.gov.au) or phone 03 9298 8000

16.2 If the Requestor believes that the matter remains unresolved, it can be reported to the Victorian Ombudsman by:

making a complaint online at <https://www.ombudsman.vic.gov.au/complaints> or phone 03 9613 6222.

## **17. Application of this Policy**

17.1 This Policy applies to all Council Information, except Council Information which is made available, or is otherwise accessible, under another Act.

17.2 Without limiting the generality of clause 17.1, this Policy does not apply to Council Information which is:

a) required to be made available under the *Planning and Environment Act 1987*;

b) required to be made available under the *Building Act 1993*; or

c) otherwise required to be made available on payment of a fee or charge.

## **18. Monitoring, Evaluation and Review**

18.1 Council will review this Policy every three years to ensure that it continues to reflect the expectations of the Community with respect to the availability and accessibility of Council Information.

- 18.2 From time to time, circumstances may change leading to the need for minor administrative changes to this policy. Where an update does not materially alter this policy, such a change may be made administratively. Examples of minor administrative changes include changes to names of Council departments or positions, change to names of Federal or State Government departments or a minor amendment to legislation that does not have material impact. Where any change or update may materially change the intent of this policy, it must be considered by Council.