
POLICY

**COUNCILLOR ACCESS TO INFORMATION,
COUNCIL OFFICERS AND COUNCIL PREMISES**



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OBJECTIVE

The objectives of this policy are to:

- Outline Councillors' rights to information necessary for the exercising of civic office functions;
- Provide a process on how Councillors can access council records and information;
- Provide direction on Councillor right of access to council buildings;
- Provide direction on Councillor interaction with Council officers for not only obtaining information but in general situations; and
- Provide a clear and consistent framework through which breaches of this policy will be managed and reported in alignment with the Council's Code of Conduct.

BACKGROUND

The *Local Government Act 1993* outlines the role of Councillors (Section 232) and the role of the General Manager (Section 335).

There is a separation of responsibilities and accountabilities for both these roles under the Act which has implications for access to information, the management of Council staff and access to Council premises for Councillors.

In addition, the following policies and their positions on Councillor access and management responsibilities have informed the review of this policy:

- Council's Code of Conduct 2008;
- Council's Access to Information Policy 2007;
- Council's Code of Meeting Practice 2004; and
- Council's Statement of Business Ethics 2007.

PURPOSE

This policy is divided into three parts:

1. Access to Information;
2. Access to Council Staff; and
3. Access to Council Premises.

Each section is addressed separately.

Part 1: Access to Information

RIGHTS OF ACCESS TO INFORMATION

Councillors have the same general right as members of the public to inspect and take away copies of records and documents and are subject to the same constraints.

The public may inspect correspondence and reports submitted to a meeting of Council or of a committee of which all the members are Councillors. This inspection may be carried out during the business day following the meeting or thereafter.

Section 12 of the *Local Government Act* provides that any person is entitled to inspect specific documents free of charge and other documents unless contrary to the public interest or where specific exemptions apply relating to personnel matters, trade secrets, confidentiality, commercial information and legal advice.

The right to inspect a document under the *Local Government Act* includes the right to take away a copy of the document within certain limits.

The provisions of the *Freedom of Information (FOI) Act 1989* are available to members of the community and to Councillors. A range of documents may not be made available to members of the public in accordance with the *FOI Act*.

ACCESS TO INFORMATION BY COUNCILLORS

Councillors have a right to inspect any record of the Council provided that it is relevant to the exercising of the Councillor's responsibility in his or her civic office and is not subject to privacy, confidentiality or legal restraint. This right does not extend to matters about which a Councillor is merely curious. The statutory role and duties of Mayor, Councillors and the General Manager are outlined in Sections 222, 223, 226, 232 and 335 of the *Local Government Act 1993*.

Each request will be treated on its merits but as a general rule those records immediately seen as relevant to the exercising of a Councillor's responsibility of civic office are:

- Matters before a Council meeting, either currently or within the current term of the Council; and/or
- Matters known by the General Manager to come before Council in the near future.

Councillors can also request access to other documents of the Council either by a Notice of Motion to the Council, a Freedom of Information application or a Section 12 request for access to information.

Councillors who have a personal or pecuniary interest in a document of Council have the same rights of access as any other person as stipulated by the Code of Conduct under the section 'Personal dealings with Council'.

ACCESS BY MAYOR

Access will be provided to documents and files necessary for the Mayoral role. This includes files relevant to correspondence received directly by the Mayor and is subject to the same viewing rules. As a Councillor, the Mayor is subject to the same requirements of access as apply to other Councillors.

ACCESS BY COUNCILLORS TO COMPUTER SYSTEM

Councillors shall have the same access to Council's computer system as do members of the public.

Councillors also have access to office productivity tools in the computer system to assist in word processing, email, internet, etc, but do not include access to Council records databases.

USE OF INFORMATION BY COUNCILLORS

Reference should be made to Council's Code of Conduct 2008 and Statement of Business Ethics which offer specific guidance to Councillors in dealing with information provided to them in the course of their civic duties.

It is recognised that Councillors have a role both as a member of the governing body of the Council and as an elected person and importantly it recognises the difficulty for Councillors to reconcile the two areas of responsibility when dealing with Council information and documents. It notes that while it is desirable in the public interest to maintain open government, not all information available to Councillors is available to members of the public. Councillors are made privy to information of a confidential nature the disclosure of which is specifically prohibited in certain circumstances.

The right of Councillors to have access to records is for the purpose of exercising the office of Councillor. It does not carry with it the right to disclose any information obtained by a Councillor to another person, unless it is already in the public domain. A Councillor has no authority to release documents on behalf of Council.

The Mayor shall not cause the by-passing of the general access provisions by providing to another Councillor information made available through the Mayoral role.

Councillors shall not cause the by-passing of FOI provisions by providing to a member of the public information made available to Councillors as an elected representative.

The Executive Officer will provide further guidance and assistance to Councillors in determining whether a document is confidential and/or not to be released.

PROCEDURE FOR ACCESS TO INFORMATION BY COUNCILLORS

Access by Councillors to a Council file, record or other document can only be provided according to this policy to ensure that access is obtained in ways that are legal and appropriate. This policy does not limit or restrict statutory or common law rights of access, which are as follows:

- A Councillor may request the General Manager or the Public Officer to inspect a particular Council record. Such requests shall be in writing and clearly state the purpose for which access is required. Unless circumstances of urgency apply, three clear working days notice are required for an inspection of documents stored on site. The timeframe is extended to five working days for those files/documents stored off-site (in repository). Notwithstanding, if the matter is one that is currently before the Council every effort will be made to provide priority access to the file/documents to any interested Councillor.
- The General Manager or the Public Officer shall not unreasonably decide that a document is not relevant to the performance of the Councillor's civic duty and deny access to a Council document. The General Manager or the Public Officer must state reasons for the decision if access is refused.
- If the General Manager or the Public Officer allows access; then the inspection is carried out at a suitable date and time in the presence of the Public Officer or another nominated Council Officer within the usual privacy requirements relative to the file at the Council Offices in Katoomba.
- If the General Manager or Public Officer decides that access to a document or other information held by the Council should not be given to a Councillor, and the matter is not a Section 12 request, then the Councillor has a number of options:
 - Take no further action;
 - Seek Council support for the requested access; or

- Lodge an FOI application or Section 12 request, as appropriate.
- If the Councillor wishes to appeal to Council on an access issue, the Councillor should give notice of intention to move for the production of the record (ie by way of Notice of Motion); and, at a meeting of the Council move the motion.
- If the Council passes a motion for the production of a Council record, then the General Manager must allow such access and the inspection is carried out.
- Any application under the FOI Act or Section 12 of the Local Government Act for access to records shall follow the procedures set out in the relevant Act.

A Councillor, in order to access records or files, is required to:

- Not remove documents from files or remove any files or documents from Council's premises other than copies made available by the Public Officer or a designated staff member;
- Ensure that all copying of documents or files is undertaken by the Public Officer or a designated staff member; and
- Facilitate copies of documents that fall under Section 12, Local Government Act, eg copies of building certificates may not be allowed, unless consent of the owner of the building is obtained.

All Councillors will be routinely notified of records accessed by other Councillors through the weekly Councillor Bulletin or other avenues deemed acceptable by Councillors.

SPECIAL PROVISIONS RELATING TO ALTERNATIVE ADVICE ON LAND USE AND DEVELOPMENT APPLICATION REPORT RECOMMENDATIONS

As to be expected with the democratic process, there will be instances when a Councillor (or the Council) may have an inclination to disagree with the recommendations contained in an officer report on a land use application to a Council Meeting. This is not unexpected as many issues involve both competing interests as well as merit-based considerations.

It needs to be acknowledged that in tending advice on such matters to the Council, officers are expressing a professional judgement. Issues of professional integrity arise if they are expected to also provide advice to Councillors (or the Council) for a recommendation that is contrary to their privately or publicly stated professional judgement.

To ensure that both the professional integrity of officer advice is maintained, but also that appropriate officer support is provided if sought by a Councillor (or the Council) the following protocol applies:

- Where a Councillor is seeking guidance on an alternative decision to that recommended by an officer in a Land Use Application report, the Councillor shall provide written notification of, or a resolution on the outcome sought/draft wording proposed through the Public Officer with 48 hours notice prior to the Meeting;
- On receipt of such a request or decision the General Manager shall determine the request;
- If the request is agreed the General Manager will nominate the appropriate Council Officer to provide that advice. Where the General Manager determines, given the nature of the report, the request compromises the authors professional opinion the General Manager will nominate an alternative officer; and
- Where such a resolution is made and there is insufficient time to adequately address the Councillor request then the report will be deferred to a future Council Meeting.

It is important to note that in seeking the advice on the outcome/wording proposed, the Councillor (or the Council) should not be seen to be pre-empting the final decision of the

Council. It is also essential that Councillors and the Council, in re-considering the deferred matter give adequate consideration to **all** relevant and material facts **including** the information contained in the original officer's report and any additional advice.

Part 2: Access to and interactions with Council Officers

INTERACTION BETWEEN COUNCILLORS AND COUNCIL STAFF

During Meetings

Interaction between Councillors and Staff at Council meetings and Committee meetings is regulated by:

- Section 360 of the *Local Government Act*;
- Part 10, Divisions 1 to 4 of the *Local Government (General) Regulation*;
- Council's Code Of Conduct 2008; and
- Council's Code of Meeting Practice 2004.

In essence, in Council Meetings, Councillors can ask questions of other Councillors by going through the chairperson, ask questions of Council staff by going through the General Manager, and bring forward Notices of Motion, Questions on Notice and Matters of Urgency where relevant notice has been given and procedure followed.

As defined by Council's Code of Meeting Practice 2008, at a Council Meeting, Councillors may put a question through the General Manager to a member of staff to clarify any matter before the meeting. To allow proper attention and to prepare complete answers, the majority of questions may be on notice in order that the question can be properly referenced. The Code does not allow discussion on any reply or refusal to reply by a member of staff in response to a question.

Outside of Meetings

Council's Code of Conduct 2008 requires all contact between Councillors and staff on official business of Council be made through the General Manager or in accordance with arrangements approved by the General Manager. Councillors may interact with Council staff in the following ways:

- As a general rule, the General Manager, Group Managers and Executive Officer are highly accessible to Councillors on formal meeting days and Councillors should not hesitate to contact them if they feel it necessary;
- Councillors requiring advice may contact the General Manager, relevant Group Manager, Executive Officer or Manager. Enquiries directed to the Executive Officer for action or dissemination are encouraged in order that requests are focused, followed through the system and the status is actioned;
- Councillors must put their requests for information or advice in writing (email is acceptable) to be answered by the General Manager, the appropriate Group Manager, Executive Officer or Manager. These written requests then form part of Council records and will be stored appropriately. An email address is available for this purpose:

executiveservices@bmcc.nsw.gov.au

- For all straightforward Councillor Support and routine matters (eg dates of meeting, training, equipment, payment of expenses, etc), Councillors should contact the Executive Officer. Customer Service Requests (CSR) can be logged through e-pathways via Council's webpage by clicking on the Customer Request System link. Information Technology (IT) Helpdesk enquiries may be made direct to the nominated officers in IT;

- A Group Manager, the Executive Officer or Manager has the discretion to refer any request for information to the General Manager. The officer must indicate to the Councillor their reasons for the referral; and
- If a Councillor is concerned about any refusal to provide information, they should firstly raise the matter with the General Manager (or the Mayor if it was the General Manager who refused to provide the advice). If the Councillor is still dissatisfied they should request the information by way of a Notice of Motion or a Question with Notice to the Council.

INAPPROPRIATE INTERACTIONS

This section relates to 9.7 of the Code of Conduct. Councillors are also governed by section 9.2 of the Code of Conduct, specifically, interactions with staff in 9.2 (a) and (c).

An effective working relationship between Councillors and staff is necessary in order to set Council's strategic direction and implement Council's strategies. In striving to attain and maintain an effective working relationship Council agrees that the following staff/councillor interactions are inappropriate:

- Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues;
- Council staff approaching councillors and administrators to discuss individual staff matters and not broader industrial policy issues;
- Council staff refusing to give information that is available to other councillors to a particular councillor;
- Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council;
- Councillors and administrators being overbearing or threatening to council staff;
- Councillors and administrators making personal attacks on council staff in a public forum;
- Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make;
- Councillors approaching members of staff, below Manager level, for information on sensitive or controversial matters;
- Councillors approaching staff, excluding the General Manager, the Executive Officer and Group Managers, outside the Council building or outside hours of work to discuss Council business, except where appropriately authorised or obviously in emergency/urgent situations;
- Members of staff approaching Councillors directly (rather than via their Group Manager) on issues before Council except where that Council Officer is a support person for a Committee;
- Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community;
- Councillors attending on-site inspection meetings with lawyers and/or consultants on current or proposed legal proceedings unless permitted to do so by Council's General Manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act; and
- Councillors attending meetings organised by Council Officers with Development Applicants without the permission of the General Manager or their delegate.

These guidelines for interactions between Councillors and Council officers must be read in conjunction with the Council's Code of Conduct 2008.

Part 3: Access to Council Premises

ACCESS TO COUNCIL OFFICES

As elected members of the Council, Councillors are entitled to have access to the Council Chambers, Committee Room, Mayor's Office, Councillors' Rooms, public areas of the Council's buildings and Councillor designated car park areas.

Councillors who are not in pursuit of their civic duties have the same rights of access to Council buildings and premises as any other member of the public.

As with members of the public, a Councillor has no right to enter staff-only areas without the expressed authorisation of the General Manager, the Executive Officer, a Group Manager or by resolution of Council.

This section should be read in conjunction with the Council's Code of Conduct 2008.

Part 4: Policy Breaches

BREACHES OF THIS POLICY

All occasions of a Councillor not complying with this policy should be immediately reported to the Executive Officer or General Manager.

As this policy is aligned with Council's Code of Conduct 2008, breaches of this policy will be dealt with in line with the procedures for a breach of the Code of Conduct 2008 as well as those outlined in the Serious and Substantial Complaints Policy 2008.

RELEVANT LEGISLATION

Local Government Act 1993
Freedom of Information Act 1989
Privacy and Personal Information Protection Act 1998
Health Records and Information Privacy Act 2002
Environmental Protection & Assessment Act 1979

RELEVANT POLICY AND DOCUMENTS

Code of Conduct 2008
Code of Meeting Practice 2008
Access to Information Policy 2007
Statement of Business Ethics 2007
Serious and Substantial Complaints Policy 2008
The joint publication by the Department of Local Government and ICAC, "Under Careful Consideration: Key Issues for Local Government" 1997