



Code of Practice for Access to Council Meetings and Documents

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| Policy Type: | Council Policy |
| Responsible Department: | Office of the Chief Executive Officer |
| Responsible Officer: | Chief Executive Officer |
| Related Policies and Procedures | <ul style="list-style-type: none"> • Code of Practice Procedures at Meetings. • Review of a Council Decision Procedure |
| Date Adopted: | C184; 26 November 2007 |
| Last reviewed: | C195; 27 July 2015 |
| Next review date: | Within 12 months of each periodic election (ie. By November 2019) |
| ECM Doc Set I.D. | 1732000 |

1. POLICY STATEMENT

This code captures the principles of open, transparent and informed decision making of Council meetings or those of Council Committees which have been established under Section 41 of the Local Government Act 1999 (the Act) and encourages community participation and access to such documents.

2. COMMUNITY GOAL

O5.3; Good governance & legislative framework.

3. PRINCIPLES

The Unley Council is fully committed to the principle of open government, whilst recognising that on some occasions it may be necessary in the broader community interest to restrict public access to discussion or documents in accordance with the Act.

4. POLICY OBJECTIVES

The objectives of the Code of Practice for Access to Meetings and Documents (the code) are to ensure that there are clear guidelines for the public in relation to:

- Public access to agendas
- Public access to meetings
- Matters for which the public can be excluded from meetings
- Use of the confidentiality provisions
- Public access to documents
- Accountability and reporting to the community, including the availability of the code, and grievances about the use of the code by Council.

Appendix A to the code details the grounds under Section 90(3) of the Local Government Act 1999 which allow Council or a Council Committee to order that the public be excluded from attendance at a meeting.

5. DEFINITIONS

Clear days – means that the time between the giving of the notice for the meeting and the meeting is to be determined by excluding both the day on which the notice was given and the day of the meeting. For example, notice is given on a Thursday for a following Monday meeting, the clear days being Friday, Saturday and Sunday.

For the purposes of the calculation of “clear days” under Regulation 3(2) of the Local Government (Procedures at Meetings) Regulations 2013, if a notice is given after 5 p.m. on a day, the notice will be taken to have been given on the next day.

Council Committee for purposes of this code means those Committees established by Council under Section 41 of the Local Government Act 1999.

Informal gatherings – It is not unlawful for members of council, a committee and staff to participate in informal gatherings or discussion provided that a matter which would ordinarily form part of the agenda for a formal meeting is not dealt with in such a way as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of council or committee. The following are examples:

- Planning sessions associated with the development of policies and strategies.
- Briefing or training sessions.
- Workshops.
- Social gatherings to encourage informal communication between members or between members and staff.

6. REFERENCES

City of Unley Policy – Code of Practice Procedures at Meetings.
Local Government Association – Model Code of Practice for Access to Meetings and Documents.

7. PROCEDURES

7.1 Public Access to Agendas

- (a) At least three clear days before a Council or Council Committee meeting (with the exception of special meetings of the Council) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council or Council Committee members setting out the date, time and place of the meeting and the notice must contain or be accompanied by the agenda for the meeting.
- (b) The notice and agenda are also to be placed on public display at the principal office of the Council at the same time as they are forwarded to Council members.
- (c) The CEO must publish the notice and the agenda for a meeting on the Council's website.
- (d) The notice and agenda must be kept on public display, and continue to be published on the website until the completion of the relevant meeting.
- (e) As allowed for in Section 88(7) of the Act, where a committee is not performing a regulatory activity these procedures may be varied (ie. they may be given in a form decided by the committee) and need not be given for each meeting separately. Public notice may be given at a place determined by the CEO taking into account the nature and purpose of the committee.

7.2 Public Access to Meetings

- (a) Council (and Council Committee) meetings are open to the public – and attendance is encouraged except where the Council (or the Council Committee) believes it necessary in the broader community interest to exclude the public from the discussion of a particular matter.
- (b) The public will only be excluded when considered absolutely necessary and if the circumstances meet the provisions of Sections 90 and 91 of the Act.
- (c) These requirements for public access to meetings do not apply to informal gatherings or discussions pursuant to Section 90(8) of the Act.

7.3 Use of the Confidentiality Provisions

- (a) Distribution of agenda papers to Members of Council may include advice from the CEO, after consultation with the Mayor and relevant Council Committee Presiding Member, that a document or report on a particular matter may be considered in confidence, with the public to be excluded. Where this occurs, the CEO must specify the basis for keeping the matter confidential in terms of Section 90(3) of the Act.
- (b) At the Council or Council Committee meeting, Members will then consider if excluding the public is necessary and appropriate in accordance with the tests contained in Sections 90(3) and 90(4) and 91(8) of the Act.
- (c) Before a meeting excludes the public from discussion of a particular matter, the meeting must, in public, formally determine if this is necessary, and then pass a resolution to exclude the public. If a decision to exclude the public is taken, the grounds for this are to be communicated to the public, both in the meeting at the time of the request to leave, and in the minutes.
- (d) When discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document associated with the agenda item, is to remain confidential. In determining this, the meeting shall have regard to the provisions of Section 91 of the Act.
- (e) Once discussion on the confidential matter is concluded, the public will be permitted to re-enter the meeting. Once members of the public have returned, the decision of the meeting in relation to the confidential matter should be made publicly known unless there has been a formal resolution ordering that some information is to remain confidential.
- (f) All details pertaining to any order by the Council or a Council Committee to keep information or a document confidential in accordance with Sections 90 and 91 of the Act, are also to be made known. These are to be recorded in the minutes, which are to be available within five days after the meeting. The intention is that the information will be made publicly available at the earliest possible opportunity.
- (g) For the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, the matter may be deferred until all other business has been dealt with.

7.4 Public Access to Documents

- (a) Once a matter has been dealt with, the Council or Council Committee may order that a document relating to the confidential matter is to be kept confidential, in accordance with Section 91(7) and (9) and Section 90(3) of the Act. Where this is considered absolutely necessary, a resolution to this effect is required. The resolution is to include the

grounds for confidentiality and the duration of the order, or circumstances in which the order will cease to apply, or when the order must be reviewed. The resolution is to include whether any delegation of authority is assigned to an officer to revoke the order and, if relevant, any conditions associated with this delegation. Section 91(8) imposes limits on the Council's power to keep documents confidential. The reader is referred to sub-Sections 91(8)(a) to (c) and 91(9) of the Act.

- (b) The Council must ensure that a note is made in the minutes recording the making of the order for confidentiality, the grounds and the decision of the Council in relation to the duration of the order.
- (c) It should be noted that under Section 91 of the Act there are provisions for access to Council documents. Enquiries regarding access to documents held by the Council are to be directed to the Council's Freedom of Information Officer.
- (d) The Council's minutes, reports, recommendations and financial statements are available for inspection without payment. Access to a document which is subject to a current confidentiality order of the Council in accordance with Section 91(7) of the Act is governed by the provisions of the Freedom of Information Act 1991.

7.5 Accountability and Reporting

Council will include details on the use of the confidentiality provisions in the Annual Report.

7.6 Availability of the Code

A copy of this code is available to the public at the Civic Centre, and via the Council's web site. A copy of the code will be supplied if requested, in accordance with the Council's Schedule of Fees and Charges.

7.7 Review

The implementation of this code will be reviewed in accordance with Section 92(2) of the Act (i.e. within 12 months of a periodic election) to ensure that the principle of open government sought in the legislation is being strictly observed. Any amendments to this policy will be made in accordance with the consultation requirements of Section 92(5)(a) and (b) of the Act.

7.8 Grievances

- (a) Section 270 of the Act governs the process in relation to a formal Review of a Council Decision. Council's Review of a Council Decision Procedure should be referred to for the principles and procedures regarding grievances about the Council's use of confidentiality provisions.
- (b) It is the spirit of this code of practice, that all grievances should be resolved with the Council. If resolution has not been reached, the

Freedom of Information Officer will provide details to assist a complainant to contact the Ombudsman if required.

8. LEGISLATION

This is a mandatory code under Section 92 of the Act. The code must be reviewed within 12 months of the conclusion of each periodic election.

Other relevant legislation includes;

Local Government (Procedures at Meetings) Regulations 2013

Freedom of Information Act 1991.

9. DELEGATIONS

Information about the sub-delegated powers relevant to this code can be found in the Council's Delegations Register.

10. DOCUMENT HISTORY

| Date | Council/Committee/Internal | Comment |
|---------------|----------------------------|--------------------------------|
| 26 Nov 2007 | C 184 | Policy no. 042 |
| 19 April 2010 | CSP 306 | |
| 16 May 2011 | CSP 31 | |
| 23 May 2011 | C 135 | |
| 14 May 2012 | CSP 108 | |
| 28 May 2012 | C 420 | |
| 24 March 2014 | C 1086 | Was policy no. COU6 |
| 27 July 2015 | C 195 | Mandatory post-election review |

Appendix A – Matters for which a Council or Committee can order that the public be excluded.

Council, or a Council Committee, may order that the public be excluded in the following circumstances in accordance with Section 90(3) of the Local Government Act 1999:

- a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
- b) information the disclosure of which -
 - (i) could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Council; and
 - (ii) would, on balance, be contrary to the public interest;
- c) information the disclosure of which would reveal a trade secret;
- d) commercial information of a confidential nature (not being a trade secret) the disclosure of which -
 - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
 - (ii) would, on balance, be contrary to the public interest.
- e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;
- f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
- g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
- h) legal advice;
- i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;
- j) information the disclosure of which -
 - (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and
 - (ii) would, on balance, be contrary to the public interest;
- k) tenders for supply of goods, the provision of services or the carrying out of works;
- l) (22/5/2003; sub-section deleted from Local Government Act 1999)
- m) information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Development Plan

- Amendment proposal relating to the amendment is released for public consultation under that Act; or
- n) information relevant to the review of a determination of a council under the Freedom of Information Act 1991.

For the purposes of Section 90(9) of the Local Government Act 1999:

The definition of “personal affairs” of a person includes –

- (a) that person’s -
- (i) financial affairs;
 - (ii) criminal records;
 - (iii) marital or other personal relationships;
 - (iv) personal qualities, attributes or health status;
- (b) that person’s employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person,

but does not include the personal affairs of a body corporate.