

CODE OF PRACTICE - ACCESS TO COUNCIL AND COMMITTEE MEETINGS AND DOCUMENTS

Code Type:	Council
Responsible Department:	Office of the CEO
Responsible Officer:	Manager Governance
Related Policies and Procedures	<ul style="list-style-type: none"> • Code of Practice – Procedures at Meetings • Internal Review of a Council Decision Procedure • Local Government Association of South Australia Access to Council and Committee Meetings and Documents Model Code of Practice
Community Plan Link	4. Civic Leadership 4.1 We have strong leadership and governance 4.3 Our business systems are effective and transparent
Date Originally Adopted	26 November 2007
Last review date	24 June 2024
Next review date	May 2027
ECM Document No.	8997033

1. PREAMBLE

- 1.1.** This Code of Practice for Access to Council and Committee Meetings and Documents (Code), captures the principles of open, transparent and informed decision making of Council meetings or those of Council Committees (Committees) which have been established under Section 41 of the *Local Government Act 1999 (Act)* and encourages community participation and access to such documents. Section 92 of the Act requires Council to prepare and adopt a Code of Practice for Access to Meetings and Documents.
- 1.2.** The City of 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.

2. SCOPE

2.1. This Code applies in its entirety to:

- Council;
- Council Members; and
- Committees of Council established under Section 41 of the Act

3. CODE PURPOSE/OBJECTIVES

3.1. The purpose and objectives of the Code are to ensure that there are clear guidelines for the public in relation to:

- access to the agenda for meetings;
- public access to meetings;
- the process to exclude the public from meetings;
- information and briefing sessions;
- review of confidentiality orders;
- how the Council will the use of the confidentiality provisions in the Act;
- public access to documents, including minutes;
- accountability and reporting to the community, including the availability of the Code;
- review of the Code; and
- grievances about the use of the Code by Council.

3.2 The circumstances in which a Council or Committee may order the public to be excluded are detailed in Section 90(3) of the Act and are included as Appendix A. The minutes of the meeting will record the reason for going into confidence and must explain why it is in the public interest to exclude the public.

4. DEFINITIONS

<u>Term</u>	<u>Definition</u>
Chief Executive Officer (CEO)	Means the appointed CEO or Acting CEO. For the purposes of this Code, the City of Unley.
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)(3) of the <i>Local Government (Procedures at Meetings) Regulations 2013</i> (Regulations), 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	Means a council constituted under the <i>Local Government Act 1999</i> (Act)
Council Committee	Means those Committees established by Council under Section 41 of the Act.
Council Member	Means an Elected Member of the City of Unley.

Council staff/employee	Means any person that is employed full-time, part time, or casually by the Council who received remuneration for their work.
Information and briefing sessions	It is not unlawful for members of Council, a Council Committee (Committee) and Council staff to participate in information and briefing sessions 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: <ul style="list-style-type: none"> ▪ Planning sessions associated with the development of policies and strategies. ▪ Briefing, information or training sessions. ▪ Workshops. ▪

5. CODE STATEMENT/PROCEDURES

5.1. Public Access to Agendas for Meetings

- 5.1.1. At least three (3) clear days before a Council or Committee meeting (with the exception of special meetings of the Council) the CEO must give written notice of the meeting to all Council or 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. Items listed on the agenda will be described accurately and in reasonable detail.
- 5.1.2. The notice of the meeting and agenda will be placed on public display at the principal office of the Council at the same time as they are forwarded to Council Members.
- 5.1.3. The CEO must publish the notice and the agenda for a meeting on the Council's website.
- 5.1.4. The notice of the meeting and agenda will be kept on public display, and continue to be published on the website until the completion of the relevant Council or Committee meeting.
- 5.1.5. As allowed for in Section 88(7) of the Act and Part 3 Regulation 24 of the Regulations, 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.
- 5.1.6. Members of the public may obtain a copy of the agenda and any particular reports on payment of a fee (if any) fixed by the Council.

5.2. Public Access to Meetings

- 5.2.1. Council and Committee meetings are open to the public and attendance is encouraged except where the Council or the Committee believes it is necessary in the broader community interest to exclude the public from the discussion, and if necessary, a decision of a particular matter.

- 5.2.2. The public will only be excluded when considered absolutely necessary ie. the need for confidentiality outweighs the principle of open decision making.

5.3. Process to Exclude the Public from a Meeting

- 5.3.1. Before a meeting orders that the public be excluded to enable the receipt, discussion and consideration of a particular matter, the meeting must in public, formally determine if this is necessary and appropriate, and then pass a resolution to exclude the public while dealing with that particular matter. If this occurs then the public must leave the room. This means that all members of the public (including Council staff), unless exempted by being named in the resolution as entitled to remain, are required to leave the room. For the operation of Section 90(2) of the Act a member of the public does not include a Council Member.
- 5.3.2. Once Council, or a Committee has made the order, it is an offence for a person, who knowing that an order is in force, enters or remains in a room in which such a meeting is being held. Should a member of the public refuse to leave the room whilst an order is in place, Council will adjourn the meeting and reconvene once the member of the public has left, or conduct the meeting at an alternative location. It is lawful for Council to engage the services of the Police or a Security Guard to enforce the requirement to leave the room whilst an order is in place.
- 5.3.3. Council, or a Committee, can by inclusion within the resolution permit a particular person or persons to remain in the meeting. An example would be allowing a ratepayer who is suffering personal hardship to remain in the meeting when their circumstances concerning the payment of rates is being discussed.
- 5.3.4. Once discussion on that particular matter is concluded, the public are then permitted to re-enter the meeting. If there is a further matter that needs to be considered in confidence it is necessary to again undertake the formal determination process and to resolve to exclude the public as above.

5.4. Information and Briefing Sessions

- 5.4.1. Council or the CEO are permitted to facilitate an 'information or briefing session' where more than one member of the Council or Committee is invited.
- 5.4.2. A matter must not be dealt with at an information or briefing session in such a way so as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of Council or Committee.
- 5.4.3. An information or briefing session on a matter that will be included on a council agenda must be open to the public. However, the Council or the CEO may order that the information or briefing session be closed to the public if the matter listed for discussion falls within the confidentiality provisions listed in Section 90(3) of the Act.
- 5.4.4. Whether or not an information or briefing session has been open to the public, the following information must be published as soon as practicable after the holding of the session:
- the place, date and time of the session;
 - the matter discussed at the session; and

- whether or not the session was open to the public.

5.5. Use of the Confidentiality Provisions

- 5.5.1. Distribution of agenda papers to Council Members may include advice from the CEO, after consultation with the Mayor and relevant 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.
- 5.5.2. At the Council or Committee meeting, Members will then consider if excluding the public is necessary and appropriate in accordance with Sections 90(3) and 90(4) and 91(8) of the Act.
- 5.5.3. 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.
- 5.5.4. Once discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that document(s) (or parts of the document(s)) associated with the agenda item, including minutes, are to remain confidential.
- 5.5.5. If the meeting determines that it is necessary to keep a document(s) (or parts of document(s)) confidential, then a resolution for an order to this effect is required in accordance with Section 91(7) of the Act.
- 5.5.6. The Council or the Committee can only resolve to keep minutes and/or documents confidential under Section 91(7) of the Act if they were considered in confidence at a Council or Committee Meeting pursuant to Sections 90(2) and 90(3) of the Act.
- 5.5.7. The Council will not consider a number of agenda items “in confidence” together i.e. en bloc. It will determine each item separately and consider the exemptions relevant to each item.
- 5.5.8. All details pertaining to any order by the Council or a 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 (5) days after the meeting. The intention is that the information will be made publicly available at the earliest possible opportunity.
- 5.5.9. 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.

5.6. Review of Confidentiality Orders

- 5.6.1. A confidentiality order made under section 91(7) of the Act must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. In any event, any order that operates for a period exceeding twelve (12) months must be reviewed at least once in every year.
- 5.6.2. An order will automatically lapse if the time or event specified has been reached or carried out. There is no need for Council to resolve for the

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confidentiality order to be lifted. Once the order expires or ceases to apply, the minutes and/or documents automatically become public. At this point in time, Council will make this information publicly available by publishing it on Council's website.

- 5.6.3. Orders that exceed twelve (12) months must be reviewed annually and the Council must assess whether the grounds for non-disclosure are still relevant and, if so, provide the relevant grounds and reasons for the minutes and/or documents remaining confidential. The conduct of the annual review can be delegated to the CEO and sub-delegated to a Council employee if appropriate. If there are any items that require a fresh confidentiality order because the original order is about to expire, then the reviewer will prepare a report to Council making recommendations with respect to each item to be retained in confidence. Each item must be addressed separately and assessed against section 90(3) and section 91(7) of the Act. While a Council may delegate the power to undertake an annual review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.
- 5.6.4. Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the application of the relevant ground under section 90(3) of the Act. Section 90(3) of the Act must be applied separately to each item within the scope of the review and not en bloc.
- 5.6.5. Council or a Committee may delegate to a Council employee the power to revoke an order made in accordance with Section 91(7) of the Act. Such delegation may be subject to conditions.

5.7. Public Access to Documents

- 5.7.1. Section 132 of the Act provides for various documents to be made available for inspection and purchase by the public for a fee set annually by Council. Additionally Section 9 of the *Freedom of Information Act 1991* requires Council to publish an Information Statement. The purpose of this statement is to provide details around how to access information held by Council, what information Council can provide and how this information is managed by Council.
- 5.7.2. Council may also make a document available in electronic form and place it on the internet for public access. Schedule 5 of the Act (included as Appendix B) lists all documents which must be publicly available and/or available for purchase.
- 5.7.3. In accordance with Section 91(8) of the Act the Council or Council Committee must not make an order to prevent:
 - the disclosure of the remuneration or conditions of service of an employee of the Council after the remuneration or conditions have been set or determined; or
 - the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the Council as to why a successful tenderer has been selected; or
 - the disclosure of the amount or amounts payable by the Council under a contract for supply of goods or the provision of services (including carrying

out of works) to, or for the benefit of, the council after the contract has been entered into by all parties to the contract; or

- the disclosure of the identity of land that has been acquired or disposed of by the Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council.

5.8. Public Access to Minutes

5.8.1. Minutes of a meeting of Council or a Committee must be made available, on the Council's website www.unley.sa.gov.au

5.9. Accountability and Reporting to the Community

5.9.1. A report on the use of Sections 90(2) and 91(7) of the Act by Council and Committees must be included in the annual report of Council as required by Schedule 4 of the Act. This supports commitment to the principle of accountability to the community. The reporting should include the following information, separately identified for both Council and Committees:

5.9.1.1. Number of occasions each of the provisions of Sections 90(2) and 90(3) were utilised;

5.9.1.2. Number of occasions each of the provisions of Sections 90(2) and 90(3) and Section 91(7) of the Act were utilised, expressed as a percentage of total agenda items considered;

5.9.1.3. An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion e.g. a proposal to acquire a parcel of land was considered on three (3) separate occasions;

5.9.1.4. Number of occasions that information originally declared confidential has subsequently been made publicly available; and

5.9.1.5. Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

5.10. Review

5.10.1. This Code will be reviewed once in a term of Council within twelve (12) months after the conclusion of each periodic election.

5.11. Grievances

5.11.1. Council has established an Internal Review of Council Decision Procedure (Procedure) for the review of decisions under Section 270 of the Act for:

- Council and its Committees;
- Council employees; and
- Other persons acting on behalf of Council.

5.11.2. Should a person be aggrieved about public access to either a meeting or a document they can lodge an application for review of that decision under this Procedure. The Procedure is available from the Council's website www.unley.sa.gov.au

6. DELEGATIONS

Nil.

7. LEGISLATION

- *Freedom of Information Act 1991*
- *Local Government Act 1999*
- *Local Government (Procedures at Meetings) Regulations 2013*

8. AVAILABILITY OF THE CODE

8.1. The Code is available for public inspection during normal office hours at:

The Civic Centre,
181 Unley Road, Unley SA 5061.

A copy may be purchased for a fee as determined annually by Council.

It is also available for viewing, download and printing free of charge from the Council's website www.unley.sa.gov.au.

9. DOCUMENT HISTORY

Date	Version No.	Comment
26 November 2007	Version 1	C184
23 May 2011	Version 2	C135
28 May 2012	Version 3	C420
24 March 2014	Version 4	C1086
27 July 2015	Version 5	C195
24 June 2024	Version 6	C1311/24

Refer 3.2: Appendix A – Matters for which a Council or Committee can order that the public be excluded from attendance at a meeting

The following information and matters are listed for the purposes of section 90(2) of the Act:

Section 90(3)(a) – *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*

Section 90(3)(b)(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*

Section 90(3)(b)(ii) – *information the disclosure of which would reveal a trade secret;*

Section 90(3)(c) – *Trade Secrets*

Section 90(3)(d) – *commercial information of a confidential nature (not being a trade secret) the disclosure of which—*

Section 90(3)(d)(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

Section 90(3)(d)(ii) – would, on balance be contrary to the public interest;

Section 90(3)(e) – *matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;*

Section 90(3)(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;*

Section 90(3)(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;*

Section 90(3)(h) – *Legal advice*

Section 90(3)(h)(i) - relating to actual litigation, or litigation on reasonable grounds will take place

Section 90(3)(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;

Section 90(3)(j)(i)- would divulge information provided on a confidential basis to a Minister of the Crown or another public authority or official

Section 90(3)(j) – *information provided on a confidential basis by or to a public authority or official*

Section 90(3)(j)(ii) - would on balance be contrary to the public interest

Section 90(3)(k) – *tenders for the supply of goods, the provision of services or the carrying out of works;*

Section 90(3)(m) – *information relating to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the Planning, Development and Infrastructure Act 2016 before the draft instrument or amendment is released for public consultation under that Act;*

Section 90(3)(n) – *information relevant to the review of a determination of a council under the Freedom of Information Act 1991.*

Section 90(3)(o) - *information relating to a proposed award recipient before the presentation of the award.*

For the purposes of Section 90(9) of the Act:

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.

Refer 5.7.2: Appendix B – Documents to be made available by Councils

Reviews of council constitution, wards and boundaries

Representation options papers and reports on reviews of council composition or ward structure (Chapter 3 Part 1 Division 2 of the *Local Government Act 1999*)

Registers and Returns

Registers required under the *Local Government Act 1999* or the *Local Government (Elections) Act 1999*, other than the Register of Interests kept for the purposes of Chapter 7 Part 4 Division 2 Campaign donations returns under the *Local Government (Elections) Act 1999*

Codes

Codes of conduct or codes of practice under the *Local Government Act 1999* or the *Local Government (Elections) Act 1999*

Meeting papers

Notice and agenda for meetings of the council, council committees and electors

Minutes of meetings

Documents and reports to the council or a council committee that are able to be supplied to members of the public

Recommendations adopted by resolution of the council

Policy and administrative documents

Record of delegations under the *Local Government Act 1999* (other than delegations made by the Minister)

Contract and tenders policies

Policy for the reimbursement of members' expenses

Strategic management plans

Annual business plan (after adoption by council) and summary required under the *Local Government Act 1999*

Annual budget (after adoption by council)

Audited financial statements

Annual report

Extracts from the council's assessment record

List of fees and charges

Public consultation policies

Management plans for community land

Policy on the making of orders Procedures for the review of council decisions (Chapter 13 Part 2) and any report under section 270(8) of the *Local Government Act 1999*

Charter for subsidiaries established by the council or for which the council is a constituent council

The most recent information statement of the council under the *Freedom of Information Act 1991*

Any policy document of the council within the meaning of the *Freedom of Information Act 1991* (if not already referred to above)

By-laws

By-laws made by the Council