

# Moira Shire Council

## Public Transparency Policy

<b>Policy type</b>	Council
<b>Version Number</b>	2
<b>Responsible Director</b>	Director Corporate Performance
<b>Responsible Officer</b>	Manager Governance, Risk & Performance
<b>Date adopted by Council</b>	
<b>Scheduled for review</b>	This policy will be reviewed four years from the date of adoption, or sooner if required.

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Administrative changes do not materially alter the document (such as spelling/typographical errors, change to the name of a Council department, a change to the name of a Federal or State Government department). Administrative updates can be made in accordance with the Policy Framework Guidelines.

## PURPOSE

The purpose of this policy is to support Council in its ongoing drive for good governance and the importance of open and accountable conduct and how Council information is to be made publicly available.

Council must adopt and maintain a public transparency policy under section 57 of the *Local Government Act 2020* (the Act).

This policy gives effect to the *Public Transparency Principles* outlined in section 58 of the Act.

## SCOPE

This policy covers:

- Documentary information;
- Process information including the basis upon which decisions are made; and
- How information will be made available to the public.

This policy applies to Councillors/Administrators, Council staff and other personnel (including contractors) of the Council.

## DEFINITIONS

Term	Definition
Councillor	<p>A person who holds the office of member of Council as defined in the <i>Local Government Act 2020</i>.</p> <p>Including Administrators in accordance with <i>Local Government (Moirā Shire Council) Act 2023</i>.</p>
Community	<p>Is a flexible term used to define groups of connected people. We use it to describe people of Moira Shire generally, including individuals or groups who live, work, play, study, visit, invest in or pass through the municipality.</p> <p>More specifically, it can refer to everyone affiliated with Moira, or smaller groups defined by interest, identity or location, and not necessarily homogenous in composition or views. Different types of communities often overlap and extend beyond municipal boundaries. Communities may be structures, as in the clubs or associations or unstructured, such as teens. Communities are flexible and temporary, subject to individual identity and location.</p>
Closed Meeting	<p>When council resolves to close the meeting to the general public, in order to consider confidential matter regarding issues of legal, contractual or personnel nature and other issues deemed not in the public interest.</p>
Confidential Information	<p>means the following information in accordance with section 3 of the <i>Local Government Act (LGA)2020</i>: Council business information; Security information; Land use planning information; Law enforcement information; Legal privileged information; Personal information; Private commercial information; Confidential meeting information; Internal arbitration information; Councillor Conduct Panel information; Information that was Confidential for the purpose of section 77 of the <i>LGA1989</i>.</p>
Council Information	<p>means all documents and other information held by Council.</p>

Transparency	A lack of hidden agendas or conditions, and the availability of all information needed in order to collaborate, cooperate and make decisions effectively. Importantly, “transparency” is also a human rights issue: the right to have the opportunity, without discrimination, to participate in public affair (s.58 of The Act)
Public Interest	Council may refuse to release information if it determines that the harm likely to be created by releasing the information will exceed the public benefit in being transparent. When considering possible harm from releasing information, Council will have regard to potential harm to the community. This could include such things as loss of public funds, preventing council from performing its functions, involves commercial-in-confidence information or relates to litigious risk.

## POLICY STATEMENT

### 1. PRINCIPLES FOR TRANSPARENCY

Council commits to the following principles for public transparency as detailed in section 58 of the *Local Government Act 2020*:

- a) Council decision-making process must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act:
- b) Council information must be publicly available unless –
  - i. The information is confidential by virtue of this Act or any other Act; or ii. Public availability of the information would be contrary to the public interest:
- c) Council information must be understandable and accessible to members of the municipal community:
- d) Public awareness of the availability of Council information must be facilitated.

### 2. WHAT WILL COUNCIL BE TRANSPARENT WITH

#### Decision-Making at Council Meetings

- Will be informed through community engagement, views and responses, in accordance with community engagement principles defined in the Community Engagement Policy.
- Will be informed by:
  - A Council report that details factual and evidence-based-information that has guided the officer recommendation provided in the agenda for the Council meeting.
  - Council debate during the meeting which is open to the community or can be viewed on the livestream (and available as a recording on Council’s website).
- Will be conducted in open meetings, unless in accordance with the provisions in the Act and Governance Rules.
- Will be undertaken in accordance with the Act, including the Governance Rules and other legislation.
- Will be made fairly and on merit, and where any person whose rights will be directly affected by a decision of the Council, that person will be entitled to communicate their views and have their interests considered.

## **Inform and engage with the community**

Council informs, and engages with its community on the various ways they may participate in Council decision-making, these include but are not limited to:

- Direct mail to residents
- Information sessions
- Invitations for submissions
- Online surveys
- Onsite meetings
- Planning consultation forums
- Public meetings
- Council and Community member Panels
- Provision of drafts and exhibits for public comments
- Public question time at Council meetings
- Public presentations at Council meetings
- Community newsletter
- Community updates in local newspapers

Council's website, including the 'Have Your Say' and 'Moira Matters' sections provide information on Councils projects, programs and activities and informs people on how they can provide feedback, comments and become involved.

Council uses its social media platforms to publish and promote Council Information such as Council meetings and community consultation, to encourage community engagement and transparency.

## **Council Information**

Council delivers a range of services to residents, business and visitors to the Moira Shire and our services and functions are documented. Council will make the following information available:

### **Documents** such as:

- Plans and Reports adopted by Council;
- Council Policies;
- Project and service plans;
- Grant application, tenders and;
- Service agreements, contracts, leases and licences;
- Council leases, permits and notices of building and occupancy; and
- Relevant technical reports and / or research that informs decision-making.
- Submissions received under section 223 of the *Local Government Act 1989* until its repeal or received through a community engagement process undertaken by Council.

### **Process information** such as:

- Practice notes and operating procedures;
- Application processes for approvals, permits, grants, access to Council services;
- Decision-making processes;
- Guidelines and manuals;
- Community engagement processes;
- Complaints handling processes.

**Council records** will, at a minimum, be available on Council's website:

- Council and Delegated Committee meeting agendas and minutes;
- Reports from Advisory Committees to Council
- Audit and Risk Committee Performance Reporting; Terms of reference or charters for Advisory Committees;
- Local Laws made by Council;
- Registers of gifts, benefits and hospitality offered to Councillors/Administrators or Council Staff;
- Registers of travel undertaken by Councillors/Administrators or Council Staff;
- Registers of Conflicts of Interest disclosed by Councillors/Administrators or Council Staff;
- Submissions made by Council to State or Federal processes;
- Registers of donations and grants made by Council;
- Memorandums of Understanding entered into by Council that are not subject to confidentiality clauses;
- Registers of leases entered into by Council, as lessor and lessee;
- 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 required by legislation or determined to be in the public interest.

### **Other Publications**

Council publishes a range of reports and handbooks for residents, businesses and visitors which can be downloaded from the website or obtained via a call to Council. Some of these publications are available at Goulburn Valley (GV) Libraries who provide library services to Moira Shire.

### **3. ACCESS TO INFORMATION**

- Information will be made available and maintained on the Council website, open data, at Council offices, or by request.
- Members of the public can make different kinds of information requests to the council (e.g. informal requests for documents and information or formal FOI requests). The formality of the request, or pre-requisites for access may vary, depending on the nature of the document and the context.
- Information requested to be released will be assessed with regard to confidentiality in accordance with the Act and public interest test where appropriate. This may include providing a copy, arranging inspection or viewing or otherwise providing access to the document. An applicant may otherwise be advised that access to a document can be obtained via another method such as a statutory release scheme or for purchase.
- Consideration will be given to accessibility and cultural requirements in accordance with the *Charter of Human Rights and Responsibilities Act 2006*. Council will provide reasonable support to the applicant to ensure that the Council Information provided is accessible by them.

#### 4. INFORMATION NOT AVAILABLE

Some Council information may not be made publicly available. This will only occur if the information is confidential information or if its release would be contrary to the public interest or not in compliance with the *Privacy and Data Protection Act 2014*.

“Confidential information” is defined in section 3 of the *Local Government Act 2020*. It includes the types of information listed in the following table.

Type of information	Description
Council business information	Information that would prejudice the 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 would unreasonably expose the business, commercial or financial undertaking to disadvantage if released.
Confidential meeting information	Records of a Council and delegated committee meetings that are closed to the public to consider confidential information.
Internal arbitration information	Confidential information relating internal arbitration about an alleged breach of the councillor/administrator code of conduct.
Councillor Conduct Panel confidential information	Confidential information relating to a Councillor/Administrator Conduct Panel matter.
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> .

Council may decide, in the interests of transparency, to release information to the public even though it is confidential under the Act. However, this will not happen if release is

- contrary to law;
- in breach of contractual requirements; or
- releasing the information is likely to cause harm to any person or is not in the public interest to do so.

#### Public Interest Test

Council is not required to make publicly available information if the release would be contrary to the public interest, in accordance with the *Local Government Act 2020*. When considering public interest, Council will apply the test that exists in the *Freedom of Information Act 1982*. Council

may refuse to release information if it is satisfied that the harm to the community likely to be created by releasing the information will exceed the public benefit in it being released.

Council may refuse to release information if it determines that the harm likely to be created by releasing the information will exceed the public benefit in being transparent.

When considering possible harm from releasing information, Council will have regard to potential harm to the community or members of the community. Potential harm to the Council will only be a factor if it would also damage the community, such as where it involves a loss of public funds or prevents the Council from performing its functions.

Information that might be withheld because it is contrary to the public interest may include:

- internal working documents that have not been approved or submitted to Council, especially their release may mislead the public;
- directions to Council staff regarding negotiations in contractual or civil liability matters, where release may damage the Council’s capacity to negotiate the best outcome for the community; and
- correspondence with members of the community, where release may inappropriately expose a person’s private dealings – (e.g. complaint handling & enforcement).

Where information is not confidential, and not already available, Council will apply the principles of the public interest test together with consideration to the resources required to respond.

### Copyright

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.

## 5. RESPONSIBILITIES

It is everyone’s role to promote and facilitate access to council information in accordance with the public transparency policy.

<b>Party/parties</b>	<b>Roles and responsibilities</b>	<b>Timelines</b>
Council	Establish the strategic level commitment and principles for public transparency through leadership, modelling practice and decision-making.	Ongoing
Chief Executive Officer	The Chief Executive Officer has primary responsibility for the effective and efficient management of the day-to-day operations of the Council.  The CEO shall determine the outcome of the Public Interest Test.	Ongoing
Executive Leadership Team	Establish the behaviours that foster transparency and drive these principles through policy, process and leadership.  Monitor implementation of this policy.	Ongoing

Senior Leaders	Manage areas of responsibility to ensure public transparency, good governance and community engagement is consistent with this policy.	Ongoing
Communications and Engagement	Determining and facilitating the best methods / platforms for effectively disseminating Council information  Engaging the Community about Council matters and decisions that affect them	Ongoing
All Staff	Public transparency is the responsibility of all employees as appropriate to their role and function.  All staff respond to requests for information and facilitate provision of information in consultation with their manager and in alignment with the Policy.	Ongoing
Manager Governance, Risk and Performance	To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.	Ongoing
Governance Unit	To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.	Ongoing
Freedom of Information Officer	To receive and investigate concerns about compliance with this policy and provide recommendations for action.	Ongoing

## 6. HUMAN RIGHTS CHARTER

This policy has been reviewed against and complies with section 13 of the *Charter of Human Rights and Responsibilities Act 2006*, as this policy aligns with and provides for the protection of an individual's right not to have their privacy unlawfully or arbitrarily interfered with. It is also in line with section 18 which recognises a person's right to participate in the conduct of public affairs.

## 7. NON-COMPLIANCE WITH THIS POLICY

If a member of the community wishes to question a decision about the release of information -

- The matter should be raised directly with the officer handling the matter in the first instance.
- If not resolved satisfactorily, the decision should be referred to the Freedom of Information Officer for investigation and response.
- If the matter is still not resolved, it may be referred by the applicant directly to the:

Victorian Ombudsman, Level 2 570 Bourke Street Melbourne 3000, or phone 1800 806 314 or via the website – [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au);  
or where the complaint relates to privacy with the:

Office of the Victorian Information Commissioner, PO Box 24274, Melbourne VIC 3001, or phone 1300 006 842 or via email [enquiries@ovic.vic.gov.au](mailto:enquiries@ovic.vic.gov.au).



## 8. HOW TO ACCESS OTHER COUNCIL INFORMATION

The *Freedom of Information Act 1982* provides members of the community the right of access to documents held by Council.

Part II of the *Freedom of Information Act 1982* requires government agencies and local councils to publish a number of statements designed to assist members of the public in accessing the information it holds.

Council encourages people to call before making a Freedom of Information application as an application may not be required to get the documents. Council staff will advise what documents are available for inspection and will provide the required documents if permitted to do so.

### MONITORING AND EVALUATION

Council will monitor processes, information sharing and decision making to understand the impact of the policy.

A periodic review of this policy will be undertaken and any changes to strengthen or update the policy will be made in a timely manner.

### RELATED LEGISLATION

*Local Government Act 1989*

*Local Government Act 2020*

*Local Government (Moira Shire) Act 2023*

*Local Government (General) Regulations 2021*

*Charter of Human Rights and Responsibilities Act 2006*

*Freedom of Information Act 1982*

*Privacy and Data Protection Act 2014*

*Equal Opportunity Act 2010.*

### RELATED POLICIES AND PROCEDURES

Community Engagement Policy

Privacy Policy

### REFERENCES

Governance Rules

Public Transparency Principles

Freedom of Information Part II Statement

*Local Government Act 2020* – Public Transparency Principles Guidelines: DELWP

### DOCUMENT REVISIONS

Version	Summary of Changes	Approved by	Date
1	Original Policy adopted	Council	26/08/2020
2	Changes made to original policy	Council	27/11/2024