

Public Transparency Policy 2023

Policy statement

The City of Whittlesea acknowledges the importance of open and accountable government and sets out what Council information is to be made publicly available.

Purpose

The Public Transparency Policy will promote openness and transparency in Council decision-making processes and raise public awareness of the availability of Council information.

The policy seeks to achieve the objective by:

- Increasing community confidence and trust in Council's decision-making processes by providing access to Council information
- Promoting greater understanding and awareness by the community of how Council's decisions are made
- Facilitating public access to information that is current, easily accessible, plain English and disseminated in a timely manner
- Ensuring that our community trusts and has confidence in the City of Whittlesea
- Reassuring the community that Council is properly managing public funds and
- Reducing the need for the public to access information through the Freedom of Information (FOI) process.

Scope

This policy applies to Councillors and members of Council staff.

Alignment to Whittlesea 2040

The Public Transparency Policy primarily guides Council's work toward the following Goal as outlined in *Whittlesea 2040: A place for all: **High Performing Organisation***.

This policy enables the achievement of a High Performing Organisation Key Direction 5.2 *More informed Council decisions based on strong advice and community consultation and engagement*.

Additionally, this Policy is informed by:

Council's Governance Rules

Council's Privacy and Data Protection Policy

The Charter of Human Rights and Responsibilities Act 2006

Freedom of Information Act 1982

Local Government Act 2020

Privacy and Data Protection Act 2014

Equal Opportunity Act 2010.

W2040 Key Direction	Date of Adoption	Directorate Responsible	Date of Review
High Performing Organisation	19 September 2023	Executive Services	18 August 2027

What is Public Transparency

Transparency and accountability go hand in hand. Openness, accountability, and honesty define local government transparency and Council's obligations to share information with the community.

Transparency is central to the ability of the community to hold its elected and appointed officials accountable. Public transparency, in the local government context, requires that the work of the Council is:

- conducted openly;
- accompanied by information made freely and proactively available to the community and stakeholders; and
- supportive of participation in decision making.

Expectations should be minimal and in accordance with the law. An explanation should always be provided as to why information will not be released or why a decision cannot be made with full transparency.

Overarching Governance Principles

The development of this Policy considered the *Local Government Act 2020's* Overarching Governance Principles and the following were applied:

Lawful	☒
Best community outcome	☒

Community engagement	☒
Transparent	☒

Public Transparency Principles

Council commits to the following principles for Public Transparency as set out in s 58 of the Act:

- a) Council decision making processes must be transparent except when the Council is dealing with information that falls under the confidential provisions of the Act or any other Act.
- b) Council information must be publicly available unless:
 - i. The information is confidential by virtue of the 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.

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

Definitions of Key Terms

For the purposes of this Policy, Council adopts the following definitions:

Act	means the <i>Local Government Act 2020</i> (Vic)
Closed Meeting	means Council resolves to close the meeting to the public to consider confidential information such as legal advice, commercial business information, contractual information and information containing personal affairs.
Community engagement	means the process of seeking input on a matter.
Governance Rules	means the governance rules adopted by Council under section 60 of the Act, as amended from time to time.
Municipal community	means residents and ratepayers, traditional owners of land in the municipal district and people and bodies who conduct activities in the municipal district of Council.
Public Interest Test	means the standard test Council will apply when determining whether release of information is contrary to the public interest. Council will consider the harm likely to be created by releasing the information and the public benefit in being transparent.
Public Participation	means a range of public involvement, from informing people about Council matters through to delegating decision making to the municipal community.
Stakeholder	means an individual or group with an interest in the decisions of Council and who are directly impacted by the outcomes.
Transparency	means enabling others to see and understand how the organisation operates in an honest way. It also means to ensure the availability of all information needed in order to collaborate, cooperate and make decisions effectively.

Context/Rationale

Council must adopt and maintain a public transparency policy under section 57 of the *Local Government Act 2020* (the Act). This Policy also gives effect to the *Public Transparency Principles* outlined in section 58 of the Act.

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Decision Making at Council Meetings

Council must make decisions in accordance with its obligations under the Act, Rules and adopted policies.

Council must ensure that decisions made at Council meetings are:

- a) undertaken in accordance with the Act and the Governance Rules.
- b) conducted in an open transparent forum, unless closed in accordance with the provisions in the Act and Governance Rules.
- c) informed through community engagement, in accordance with the Community Engagement Principles and Council's Community Engagement Policy.
- d) made fairly and on the merits, 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, in accordance with the law.

Decisions made at Council meetings are informed by Council reports that are prepared by officers and included in the agenda. Council meetings agendas are made available to the community in advance of each meeting in accordance with the Governance Rules. Council meetings will be open to the public to attend or view unless closed in accordance with the provisions of the Act and Governance Rules.

Council must display records of its meetings in accordance with the Governance Rules. The public will be able to access the minutes and video recording of meetings via Council's website.

Where Council closes a meeting to the public, or closes part of a meeting to the public, on the grounds that an item is confidential, it will specify the title of that matter in agenda and the legal basis upon which the meeting is closed in accordance with the Act. The meeting minutes will also show the basis on which the meeting is closed.

Where possible, resolutions that are made when a meeting is closed for confidentiality, the item will include provision for all or part of the information to be made public providing that release of the information:

- is not contrary to law; or
- is not in breach of contractual requirements; or
- would be contrary to the public interest.

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COUNCIL INFORMATION

Availability and Accessibility of Council Information

Council delivers a range of services to residents, businesses and visitors to the municipality and our services and functions are documented. Council will publish information about Council services and administration activities on Council's website or will make them available upon request.

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

- Council information is Confidential information; or
- Release of the Council information is assessed by the Chief Executive Officer as being contrary to the public interest.

A list of available information is provided in the Part II Statement (Statement) published on Council's website in accordance with the Freedom of Information (FOI) Act. The Statement 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.

Information will be made available and maintained on the Council website in a timely manner, accessible in plain language, format and provision of a multi-lingual interpreting service.

The Freedom of Information Act 1982 (FOI Act) gives person right of access to documents that Council hold. Council is committed to proactive and informal release of information in accordance with the Freedom of Information Professional Standards issued by the Victorian Information Commissioner.

Community members who cannot find the information sought are encouraged to call Council before making an FOI application. An application may not be required to get the documents. Council staff will advise the requestor what documents are available for inspection and assist with getting the requested information.

Requests for information will be responded to in alignment with this policy and the Public Transparency Principles and the FOI Act. Consideration will be to accessibility and cultural requirements.

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 application may otherwise be advised that access to a document can be obtained via another method such as a statutory release or for purchase.

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Information Not Available

Some Council information that informs decision making by Council may not be made publicly available. This will only occur if the information is confidential information (see Confidential Information section below) or if its release would be contrary to the public interest or not in compliance with the *Privacy and Data Protection Act 2014* (Vic).

In the interest of transparency, Council may, by resolution, determine to release information to the public even though it is confidential information. However, this will not happen if the release:

- is contrary to law; or
- is in breach of a contractual requirement; or
- would be contrary to the public interest.

Public Interest Test

When determining whether release would be contrary to the public interest, Council will apply the Public Interest Test.

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

- a) the sensitivity of the Council information;
- b) whether the Council information comprises a draft, or otherwise is no longer current; and
- c) any adverse effect that releasing the Council information would have on the effectiveness of Council decision making process.

Without limiting the above, 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) relate to internal working documents that have not been approved or submitted to Council, especially where the release may mislead the public;
- e) 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 arrangement for the CEO or officers; or
 - iii. Defence, prosecution and settlement of legal proceedings; or

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- f) 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.
- g) relate to 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
- h) relate to correspondence with members of the community, where release may inappropriately expose a person's private dealings.

Information Publicly Available

The following information will be available publicly, either by way of electronic publication on Council's website, inspection or on request, to ensure the municipal community is informed and can benefit from access to information regarding Council's functions and operations:

- Practice notes and operating procedures
- Application processes for approvals, permits, grants and access to Council services
- Decision making processes
- Guidelines and manuals adopted by Council
- Community engagement processes
- Complaints handling processes
- Council meeting agendas and minutes (excluding information considered at a confidential meeting)
- Terms of Reference and/or Minutes relating to relevant Council Advisory Committees Meetings
- Council Plan and Annual Budget
- Councillor and employee register of gifts
- Councillor expenses
- Election campaign donation returns
- Conflicts of Interest disclosed by Councillors
- Submissions made by Council to other level of government
- Registers of leases entered into by Council, as lessor and lessee
- Register of Delegations to members of Council staff
- Any other Policies or Records required by legislation or determined to be in the public interest

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- Summary of Personal Interests returns

Refer to the Council's website for further information on documents available for public inspection via [Publicly available documents - Whittlesea Council](#)

Publications

Council publishes a number of newsletters and reports that can be download from the website. Some of these publications are available at the Council offices or Council libraries.

Access to information will be made available on Council's website, at the Civic Centre or by request. Consideration will be given to accessibility and cultural requirements in accordance with the *Charter of Human Rights and Responsibilities Act 2006* and to confidentiality in accordance with the *Act* and public interest test where appropriate.

Council will respond to requests for information in accordance with the *Act* including the Public Transparency Principles and this Policy.

Council information that is deemed confidential 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 and must take into consideration the requirements of the *Freedom of Information Act 1982 (Vic)* and *Privacy and Data Protection Act 2014*.

Confidential Information

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

Type	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 code of conduct.
Councillor Conduct Panel confidential information	Confidential information relating to a Councillor 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> .

Responsibilities

The following tables outlines the roles and responsibilities for various parties who may be involved.

Party	Roles and responsibilities
Council	Champion the commitment and principles for public transparency through leadership, modelling practice and decision-making.
Executive Leadership Team	Champion behaviours that foster transparency and drive the transparency principles through policy, process and leadership. Monitor implementation of this Policy.
Senior Leadership Team	Manage areas of responsibility to ensure public transparency, good governance and community engagement is consistent with this Policy.
Executive Manager Office of Council & CEO	To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.
All Staff	Public transparency is the responsibility of all employees as appropriate to their role and function. Staff must respond to requests for information and facilitate provision of information in consultation with their Manager, consistent with this Policy.

Complaints Process

If a person is not satisfied with a decision about the release of information, this should be raised directly with the officer handling the matter in the first instance. If the person is still not satisfied, the matter should be referred to the Coordinator Governance Administration for and independent review. The outcome of the independent review will be referred to the Executive Manager, Office of Council and CEO for approval.

If the person is not satisfied with Council's response, they have the right to take their complaint to the Victorian Ombudsman's Office on (03) 9613 6222. or via the website – www.ombudsman.vic.gov.au.

Review

Council is committed to monitoring processes, information sharing and decision making to understand the success of the Policy.

A periodic review of this Policy will be carried out every four years, or earlier if required, to ensure any changes required to strengthen or update the Policy are made in a timely manner.

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