



MITCHAM

Code of Practice – Access to Meetings and Documents

Adopted by Council 9 April 2019

public policy

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1. PREAMBLE

Section 92 of the Local Government Act 1999 (the Act) requires Council to prepare and adopt a Code of Practice relating to public access to Council and Committee meetings and public access to documents, including the minutes of those meetings (the Code).

2. PURPOSE

The Code sets out the commitment of the City of Mitcham to provide public access to Council and Council committee meetings and documents.

The Code includes:

- relevant provisions of the Act;
- Council's policy position on public access and participation;
- the process that will be adopted where public access to a meeting or a document is restricted;
- grievance procedures to be followed if a member of the public believes that the Council has unreasonably restricted access on a particular matter.

The Policy Statement includes information relating to:

- access to the agenda and minutes for meetings;
- public access to documents and meetings;
- the process to exclude the public from meetings;
- matters for which the Council, or a Council committee, can order that the public be excluded;
- how the Council will approach the use of the confidentiality provisions in the Act;
- ~~public access to documents, including minutes;~~
- review of confidentiality orders;
- accountability and reporting to the community;
- ~~and the~~ availability of the Code; and
- grievances about the use of the Code by Council.

3. SCOPE

This Code applies in its entirety to Full Council and Section 41 Committees of Council.

4. DEFINITIONS

CEO	Chief Executive Officer
clear days	the time between the giving of the notice and the day of the meeting, but excluding both the day on which the notice was given and the day of the meeting, eg notice is given on a Thursday for a following Monday meeting, the clear days (three) are Friday, Saturday and Sunday.

5. PRINCIPLES

The underlying principle of the Code in accordance with the Act is to provide for transparency and accountability by local government in its business and everyday operation. This is achieved by the public having, as a matter of right, access to:

- council and committee meetings; and
- the minutes and documents discussed at those meetings.

The City of Mitcham is fully committed to the principle of open and accountable government, whilst recognising that on some occasions it may be necessary to restrict public access to discussion or documents.

6. POLICY STATEMENT

6.1 1. Access to the agenda for meetings

At least three clear days⁴-before the Council or Council committee meeting (unless it is a special meeting) the CEO must give written notice of the meeting to all Council/Committee members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.

The notice of meeting, minutes and agenda will be placed on public display at the principal office of the Council and on Council's website www.mitchamcouncil.sa.gov.au. Copies will also be available at Mitcham and Blackwood Libraries.

Items listed on the agenda will be described accurately and in reasonable detail.

Copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be made available to members of the public in attendance. A reasonable number of copies will also be available for public inspection as soon as practicable after they are supplied to the Members of Council.

Members of the public may obtain a copy of the agenda and any particular reports for a fee to cover the costs of photocopying, in accordance with a Council's schedule of fees and charges.

Where the CEO of the Council (after consultation with the principal member of the Council, or in the case of a Committee - the presiding member) believes that a document or report on a particular matter should be considered in confidence with the public to be excluded, the basis under which the order could be made in accordance with section 90(3) of the Act will be specified.

6.1.2. Public access to meetings

It is usual practice for full council to meet on the second and fourth Tuesday of each month at 7pm at the Council Chambers with the exception of January and December of each year and in caretaker periods during a Local Government election year.

Section 90(1) of the Act provides that a meeting of Council or council committee must be conducted in a place open to the public. The City of Mitcham Full Council and Committee meetings are open to the public and attendance is encouraged,

except where the Council (or the Council committee) believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, decision) of a particular matter.

The public will only be excluded when the need for confidentiality outweighs the principle of open decision-making, in accordance with the 13 grounds contained within section 90(3) of the Act.

Public attendance of Council and Committee Meetings is encouraged via public notification on Council's website, on a sign at the main entrance to the Council building and in Mitcham Community News.

6.1.3. Informal meetings

In accordance with section 90 of the Act, it is not unlawful for Members of Council, Committee members 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. Please refer to the City of Mitcham's "Informal Gatherings Policy" for further direction [Website link provided here](#)

6.1.4. Process to exclude the public from a meeting

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 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) a member of the public does not include a member of Council.

Once Council, or a Council 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.

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.

Please note that the Council, or Council 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.

6.1.5. Matters from which the public can be excluded

The circumstances in which Council or a committee may order the public to be excluded are detailed in section 90(3) of the Act are included at Appendix 1.

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.

6.1.6. Matters from which the public cannot be excluded

In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may:

- cause embarrassment to the Council or Committee concerned, or to members or employees of the Council; or
- cause a loss of confidence in the Council or Committee; or
- involve discussion of a matter that is controversial within the council area; or
- make the council susceptible to adverse criticism.

as outlined in section 90(4).

If a decision to exclude the public is taken, the Council or the Council committee is required to make a note in the minutes of the making of the order and the grounds on which it was made. Sufficient detail of the grounds on which the order was made will be included in the minutes.

6.1.7. Public access to minutes

Minutes of a meeting of Council or a Council committee will be publicly available at the Council Offices, Mitcham and Blackwood Libraries, as well as on the internet, within 5 days after the meeting.

6.1.8. Use of confidentiality provisions

The policy approach of the City of Mitcham is that:

- a) The principle of open and accountable government is strongly supported;
- b) Information of the grounds on which an order to exclude the public is made will be conveyed to the public at the time of them being ordered to leave the meeting – the public will not be excluded until after a confidentiality motion has been debated and passed and sufficient reasons for the need to exclude the public given;
- c) Once discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document associated with this agenda item (including minutes) remains confidential. In determining this, the meeting will have regard to the provisions of section 91 and in particular section 91(8) which details when a Council must not order that a document remain confidential;

- d) If the meeting determines that it is proper and necessary to keep a document confidential, then a resolution for an order to this effect is required to be resolved by the meeting in accordance with section 91(7) of the Act;
- e) 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.
- f) Once discussion of the matter is concluded and the public have returned, the decision of the meeting in relation to this matter will be made publicly known unless the Council has resolved to order that some information remain confidential. Details relating to any order to keep information or a document confidential in accordance with section 91(7) are also to be made known. When making an order the meeting 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. If the section 91(7) order is to apply for a period exceeding 12 months, then this order must be reviewed every 12 months from the date it was made. This along with the making of the order pursuant to section 90(2) and the grounds pursuant to section 90(3) on which it was made are also to be recorded in the minutes.
- g) In all cases the objective is that the information be made publicly available at the earliest possible opportunity and that the community is informed of any Council order and the associated implications; and
- h) Where a person provides information to the Council and requests that it be kept confidential, Administration will consult the Act to determine if the information meets legislative requirements and will recommend to council or a committee if the request/information meets the legislative instruments, noting that it is the full council or council committee that determines if it is proper and necessary for an item to be discussed in confidence including if the decision or information be kept confidential.

6.1.9. Public access to documents

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 people wanting access to information held by Council how to access information, what information council can provide and how this information is managed by Council.

Council may also make a document available in electronic form and place it on the internet for public access. Schedule 5 of the Act (in Appendix 2) lists all documents which must be publicly available and/or available for purchase.

The Council or the Council committee can only resolve to keep minutes and/or documents confidential under section 91(7) if they were considered in confidence pursuant to sections 90(2) and 90(3).

In accordance with section 91(8) the Council or the Council committee must not make an order to prevent:

- a) 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
 - b) 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
 - c) the disclosure of the amount or amounts payable by the Council under a contract for the supply of goods or the provision of services (including the 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
 - d) 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.
- e) Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include:
 - f) the grounds for confidentiality; and
 - g) 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 – if the order has a duration of more than 12 months, the order must be reviewed at least once in every year;
 - h) (if applicable) whether the power to revoke the order will be delegated to an employee of the Council [section 91(9)].

6.1.10. Public access to Ombudsman correspondence

There may be some documents received by Council from the South Australian Ombudsman's Office that may be required by the Ombudsman or relevant legislation to be kept confidential for a period of time. They may include letters and reports (including provisional reports) produced by the Ombudsman while an investigation is in progress or has been completed.

Access by the public to these documents will be provided on a case-by-case bases having consulted the relevant parties and various/relevant Acts including (but not limited to);

- *Local Government Act 1999 (SA)*
- *Freedom of Information Act 1991 (SA)*
- *Ombudsman Act 1972 (SA)*
- *Independent Commissioner Against Corruption Act 2012*

6.1.11. Review of confidentiality orders

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 12 months must be reviewed at least once in every year.

An order will lapse if the time or event specified has been reached or carried out. There is no need for the Council to resolve for the confidential order to be lifted.

Once the order has lapsed, the minutes and/or documents automatically become public.

A review of the reports or documents that were considered under the provision of sections 90(3) and 91(7) of the Act will be conducted and a report prepared for Council twice a year, to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.

Orders that exceed 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 an employee of the Council 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 then 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.

A 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 and not en bloc.

If there is no longer any need for the confidentiality order then the Council or Council Committee may delegate to an employee of the Council the power to revoke an order made in accordance with section 91(7) of the Act. The Council or Council committee may also include in the resolution whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with the delegation.

6.1.12. Accountability and reporting to the community

A report on the use of sections 90(2) and 91(7) by the Council and Council committees must be included in the annual report of a 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 Council committees:

- a) Number of occasions each of the provisions of sections 90(2) and 90(3) were utilised;
- b) Number of occasions each of the provisions of sections 90(2) and 90(3) and section 91(7) were utilised, expressed as a percentage of total agenda items considered'
- c) 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 3 separate occasions;
- d) Number of occasions that information originally declared confidential has subsequently been made publicly available; and
- e) Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

An annual summary report of the use of confidential provisions is also required by Council. In addition, Council requires a status report on the release of confidential items twice a year.

6.1.13. Availability of the Code

The public may inspect a copy of the Code (and appendices), without charge, at the offices of Council during office hours, and may obtain a copy for a fee fixed by Council. The Code is also available on the internet at www.mit chamcouncil.sa.gov.au

6.1.14. Grievance procedures

As required by section 270 of the Act, Council has established procedures for the review of decisions made by:

- Council and its committees;
- Employees of the Council; and
- other persons acting on behalf of the Council.

Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for review of that decision under the Procedure established by Council. A copy of the Procedure is available from the Governance Unit or from Council's website.

A person may also make a complaint to the Ombudsman at any time under the *Ombudsmans Act 1972*.

7. POLICY REVIEW

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

8. VERSION HISTORY

VERSION	AUTHOR(S) POSITION	CHANGES	DATE
ECM 3936189	Virginia Fisher		
ECM 3937156	Deborah Horton, Team Leader Governance	3.Scope – deletion of irrelevant Committees 4. Definitions – insertion of clear days from body of document (6.1) 6.1.1. – Hardcopies of Agendas provided where possible at Mitcham and Blackwood Libraries. 6.1.2 – Insertion of usual practice for Meeting dates/times. Addition of 90(1) of the Act. 6.1.3 Refer reader to "Informal Gatherings Policy". 6.1.4 – Reference to the City of Mitcham Code of Practice/Procedures at meetings. 6.1.6 – Insertion of additional clauses in relation to the Act. 6.1.8 – (h) insertion of Council as an elected body to determine if it is appropriate for an item to heard or remain in confidence. 6.1.9 – Reference to Information Statement. 6.1.10 Reference to other Legislative Instruments (ICAC Act). 6.1.11 Reference to Confidential reviews being annually rather than six monthly.	22 February 2019
ECM 3937156	Deborah Horton, Team Leader Governance	6.1 be amended to refer to Agendas and Minutes will be available at Mitcham and Blackwood Libraries.	22 February 2019 Full Council Meeting Item 7.1

		6.1.11 and 6.1.12 be retained annually. The last paragraph of 6.1.4 be removed.	
ECM 3937156	Deborah Horton, Team Leader Governance	As above 22 February 2019 including minor amendments; 6.1.3 Link to informal Gatherings Policy 6.1.7 un-strike "Mitcham & Blackwood Libraries".	9 April 2019 Full Council meeting item 8.5

9. DOCUMENT CONTROL

Responsible Department	Governance		
Delegations Apply	Nil		
Classification	Public Policy		
Applicable legislation	Local Government Act 1999 Freedom of Information Act 1995 Ombudsman Act 1972 Independent Commissioner Against Corruption Act 2012		
Related Policies & Corporate Documents	City of Mitcham Informal Gatherings, City of Mitcham Code of Practice – Meeting Procedures City of Mitcham Information Statement		
Additional references			
Endorsed by Council:	[Insert Meeting Date]	Item No:	[Insert item number]
Effective Date:	[insert operational date]	Next Review Date:	November 2022
ECM Record Number:	3937156	ECM Folder Name:	Public Policy
Template Folder No:	FF/2012/245	Template Record No:	12.60143[v4]

Refer 6.1.Matters for which 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) – Personal Affairs
- Section 90(3)(b)(i) – Commercial Advantage
- Section 90(3)(b)(ii) – Contrary to Public Interest Test
- Section 90(3)(c) – Trade Secrets
- Section 90(3)(d) – Commercial information of a confidential nature
- 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 security and safety
- Section 90(3)(f) – Prejudice the maintenance of law
- Section 90(3)(g) – To ensure council does not breach any law
- 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 litigation
- 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
- Section 90(3)(m) – Information relating to a proposed amendment to a Development Plan before consultation
- Section 90(3)(n) – Information relevant to the review of a determination of a council under the Freedom of Information Act 1991.

APPENDIX 2

Schedule 5 – Documents to be made available by Councils (as extracted from the Act)

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)

Registers and Returns

Registers required under this Act 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 this Act 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 this Act (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 Act
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)
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