

	Code of Practice -	Version No:	2.3
	Access to Council and Committee Meetings	Issued:	August 2016
	and Associated Documents	Next Review:	July 2019

1. **STATEMENT OF PRINCIPLE**

The District Council of Franklin Harbour ('Council') supports the principle that the procedures to be observed at a meeting of Council, or a Council Committee, should contribute to open, transparent and informed decision-making and encourage appropriate community participation in the affairs of the Council.

However, Council also recognises that on a limited number of occasions it may be necessary, in the broader community interest, to restrict public access to discussion or documents.

2. **OBJECTIVES**

The objectives of this Code are to:

- Provide information on Council's Code of Practice to the community;
- Clearly outline to the community for what purpose and on what basis Council may apply the provisions of the Local Government Act 1999 to restrict public access to meetings or documents;
- Summarise the statutory position relating to public access to Council and Council Committee Meetings, as well as those matters in relation to access to Council documents.

3. **INTRODUCTION**

The code is intended to provide clear guidance as to the application of the provisions in the Local Government Act 1999 to restrict public access to meetings or documents. It also includes information on:

- Information on the relevant provisions of the Act;
- Council's policy 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 public access on a particular matter.

This code sets out the policy of Council for access to meetings and documents and includes information relating to:

- Access to the agenda for meetings;
- Public access to 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;

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- How the Council will approach the use of the confidentiality provisions in the Act;
- Public access to documents, including minutes;
and
- Grievances about the use of the code by Council.

4. PUBLIC ACCESS TO THE AGENDA FOR MEETINGS

- At least three clear days¹ before the Council or Council Committee meeting (unless it is a special meeting) the Chief Executive Officer (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 and agenda will be placed on public display at the principal office of the Council, at the same time.

Items listed on the agenda will be described accurately and in reasonable detail. Copies of any documents and reports that are to be considered at the meeting are to be supplied to Members.
- The Chief Executive Officer must ensure that a reasonable number of copies of any document or report supplied to Members for consideration at a meeting, are available for inspection by the public at the principal office of the Council as soon as practicable after the time when the documents or reports are supplied to Members.
- After the reports and documents have been accepted at a meeting by Members, the public may obtain a copy of the agenda and any reports for a fee to cover the costs of photocopying, in accordance with Council's schedule of fees and charges.
- Distribution of agenda papers to members of Council, or members of a committee, may include advice from the CEO of Council (after consultation with the principal member of the Council, or in the case of a Committee - the 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 Chief Executive Officer must specify the basis under which such an order could be made. However, it is a decision of the Council or Council Committee as to whether an item should be considered in confidence.

5. PUBLIC ACCESS TO MEETINGS

- The local Government Act 1999, provides that Council and Committee Meetings must be open to the public;

¹ 'clear days' means 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 are Friday, Saturday and Sunday.

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- The public will only be excluded when considered proper and necessary, where there is a need for confidentiality, which outweighs the principle of open decision-making;
- The duty to hold a meeting of Council or Council Committee at a place open to the public does not; in itself make unlawful, informal gatherings or discussions involving Members of Council or Members of Council and staff. Informal gatherings or discussion could be in the form of:
 - Planning sessions associated with the development of policies or strategies;
 - Briefing or training sessions;
 - Workshops, or
 - Social gatherings to encourage informal communication between Members or between Members and staff.

6. PROCESS TO EXCLUDE THE PUBLIC

- 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 the public must leave the room. Once Council, or a Committee has made the order it is an offence for a person, who knowing that an order is in force, to enter or remain in a room in which such a meeting is being held. It is lawful for an employee of Council, or a member of the Police, to use reasonable force to remove the person from the room if he or she fails to leave on request.
- It is the policy of this Council that for the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, that this matter, unless there are pressing reasons as to why it should be debated at that point of the meeting, will be deferred until all other business has been dealt with.
- This is the preferred option of Council rather than asking the public to leave the room, wait around for the matter to be concluded and then invite them back into the meeting room, with a possibility of the process being repeated for a subsequent matter.

7. MATTERS FROM WHICH THE PUBLIC CAN BE EXCLUDED

Council, or a Committee may order that the public be excluded in the following circumstances:

- 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 –

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- 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
 - 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 –
- 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
 - 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 –
- 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
 - Would, on balance, be contrary to the public interest;
- k) Tenders for the supply of goods, the provision of services or the carrying out of works;
- l) Information relating to the health or financial position of a person, or information relevant to the safety of a person;
- m) Information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Plan Amendment Report relating to the amendment is released for public consultation under that Act;

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n) Information relevant to the review of a determination of a council under the Freedom of Information Act 1991.

Council, or a Committee cannot make an order that the public be excluded from a meeting only on the basis that discussion of a matter in public may;

- Cause embarrassment to Council or the Committee concerned, or to members or employees of Council; or
- Cause a loss of confidence in Council or Committee.

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

8. USE OF CONFIDENTIALITY PROVISIONS

Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of a particular matter at a meeting will require the identification of the grounds as listed in paragraph 7 of this Code.

The policy approach by the District Council of Franklin Harbour is that:

- The principle of open and accountable Government is strongly supported;
- Confidentiality provisions will only be utilised when considered proper and necessary;
- 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;
- 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) remain 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;
- 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 carried by the meeting;
- 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;
- 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

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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. This along with the making of the order and the grounds on which it was made are also to be recorded in the minutes;

- 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.

Where a person provides information to the Council and requests that it be kept confidential, Council is not able to even consider this request unless the matter is one that falls within section 90(3). If this is the case, Council will then be in a position to consider the request on its merits.

9. **PUBLIC ACCESS TO DOCUMENTS**

Various documents are available for inspection or purchase for a fee determined by Council by the public. Minutes are available at the Council office, and on the Council's website at www.franklinharbour.sa.gov.au.

The Council/Committee will only make an order that a document associated with a discussion from which the public are excluded will remain confidential if it is considered proper and necessary in the broader community interest. Council/Committee can only make such orders in relation to documents that are considered in confidence (see 7 above).

Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include the grounds for the confidentiality and the duration of the order and circumstances in which the order will cease to apply or when the order must be reviewed.

The resolution will also indicate whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with this delegation.

Requests to access Council and Committee documents can be made under the Freedom of Information Act 1991. Any enquiries in relation to the process for seeking access to documents held by Council should be directed to Council's nominated Freedom of Information Officer on 8629 2019.

10. **AVAILABILITY OF CODE**

The public may inspect a copy of the code, without charge, at the offices of Council during office hours, and may obtain a copy for a fee as per the fees and charges schedule. A copy may also be downloaded from Council's website www.franklinharbour.sa.gov.au.

12. **ACCOUNTABILITY AND REPORTING TO THE COMMUNITY**

The District Council of Franklin Harbour reports on an Annual basis the use of the confidentiality provision. This supports commitment to the principle of accountability to

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the community. The reporting includes the following information, separately identified for both Council and Committees:

- Number of occasions each of the provisions were utilised;
- Number of occasions a confidential Order was utilised;
- Number of occasions that information originally declared confidential has subsequently been made publicly available in time frames of 0 – 3 months, 3 – 6 months, 6 – 12 months;
- Number of occasions that information declared confidential has still not subsequently been made publicly available.

13. GRIEVANCE

Council is required to establish procedures for the review of decisions in relation to the operation of:

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

Should a person be aggrieved about public access to either a meeting or a document, then they can lodge an application for consideration under the review of decisions procedure established by Council. A request for a review of a decision should be expressed in writing and addressed to the Chief Executive Officer of the District Council of Franklin Harbour.

A person may also lodge a complaint with the Ombudsman, who may carry out an investigation if it appears (to the Ombudsman) that Council or a Council Committee may have unreasonably

- Excluded members of the public from a meeting; or
- Prevented access to documents.

14. REVIEW OF THE CODE OF PRACTICE

This Code of Practice will be reviewed by the District Council of Franklin Harbour within 12 months after each general election of Council. To ensure that the principle of open Government is being applied in the proper manner, it is anticipated that a review of the code will take place every four (4) years. However, Council has the right to review this Code at any time, if considered desirable.

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SIGNED: 

Responsible Officer

Date: 10 December 2015