

Public Transparency Policy 2020

Department/Unit: <i>Governance</i>	First Implemented: <i>1 September 2020</i> Review Date: <i>1 September 2024</i> Version: <i>1</i> Trim Reference: <i>E513/2</i>	Origin: Responsible Officer: <i>Coordinator Governance & Risk</i> Authorising Officer: <i>Chief Executive Officer</i>
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PURPOSE

Mansfield Shire 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. See Appendix 1 of this Policy.

Council is committed to the principles of public transparency, good governance, open and accountable conduct and making council information publicly available, except where that information is confidential under the provisions of the Act or contrary to the public's interest.

POLICY STATEMENT

The aim of this policy is to formalise Council's support for transparency in decision-making processes and the public awareness of the availability of Council information. As a result, this policy seeks to promote:

- a) greater clarity in Council's decision-making processes;
- b) increased confidence and trust in the community through greater understanding and awareness;
- c) access to information that is current and easily accessible; and
- d) reassurance to the community that Council is spending public monies wisely.

This policy includes all forms of Council information and how it will be made available to the public and is an integral part of Council's governance framework.

Transparency

Council will be transparent in the following ways:

- **Decision making at Council Meetings:**
 - will be undertaken in accordance with the Act and the Governance Rules;
 - will be conducted in an open and transparent forum, unless in accordance with the confidentiality provisions of the Act and the Governance Rules;



- will be informed through community engagement, in accordance with the *Community Engagement Principles* of the Act and Council's Community Engagement Policy (to be developed prior to 1 March 2021); and
- will be made fairly and on the merits of the issue at hand. Where any person whose rights will be directly affected by a decision of Council, that person will be entitled to communicate their views and have their interests considered.

- **Council Information available to the Public**

Council information required under the Act (and the *Local Government Act 1989*) to be made available on Council's website:

- Agendas and Minutes of Council Meetings and Delegated Committees;
- Local Laws and Governance Rules;
- Council Plan and Annual Plan;
- Council Budget and Strategic Resource Plan;
- Code of Conduct – Councillors;
- Summary of Election Campaign Donation Returns;
- Summary of Personal Interest Returns; and
- Any other registers or records required to be published on Council's website under legislation or determined to be in the public interest.

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. A list of available information is provided in the Part II Statement published on Council's website at www.mansfield.vic.gov.au in accordance with the *Freedom of Information Act 1982*. This information includes, but is not limited to:

Other Council documents and information to ensure the community is informed about Council's operations and functions to be made available on Council's website:

- Adopted Council policies, plans and strategies;
- Project and service plans;
- Terms of Reference or Charters for Council Committees and Groups;
- Consultations and community engagement processes undertaken by Council;
- Reporting from Advisory Committees and Reference Groups to Council;
- Audit and Risk Committee performance reporting;
- Relevant technical reports and/or research that informs decision making;
- Practice notes and operating procedures;
- Guidelines and manuals;
- Application processes for approvals, permits, grants and access to Council services;
- Submissions made by Council;
- Register of planning permits and applications;
- Register of Building Permits, Occupancy Permits and temporary approvals;
- FOI Part II Statement; and
- Any other registers or records required to be published on Council's website under legislation or determined to be in the public interest.



Council documents and information to ensure the community is informed about Council's operations and functions that will be made available for inspection on request:

- Registers of Delegation;
- Register of gifts, benefits and hospitality offered to Councillors or Council staff;
- Register of overseas and interstate travel undertaken by Councillors or Council staff;
- Register of conflicts of interest disclosed by Councillors or Council staff;
- Register of donations and grants made by Council;
- Register of leases entered into by Council, as lessor and lessee;
- Register of authorised officers;
- Submissions received under section 223 of the *Local Government Act 1989* until its repeal or received through a community engagement process undertaken by Council (if those submissions are not part of a Council report); and
- Any other registers or records required to be made available for public inspection under legislation.

- **Publications**

Council publishes a range of newsletters, reports and handbooks for residents, businesses and visitors to Council. These can be downloaded from www.mansfield.vic.gov.au or by calling Council on 03 5775 8555 for a copy.

Access to information

Members of the public have the right to make any request for information or documents to Council if that information is not readily available to the public on Council's website or at Council's offices. Council will respond to requests for information or documents in alignment with the Act, the *Public Transparency Principles* of the Act, this policy, the *Freedom of Information Act 1982* and the *Privacy and Data Protection Act 2014*.

Consideration will always be given to accessibility and cultural requirements in accordance with the *Charter of Human Rights and Responsibilities Act 2006*.

In relation to Freedom of Information (FOI), the *Freedom of Information Act 1982* gives an applicant the right of access to documents that Council holds subject to any exemptions that may apply. If documents required cannot be located on Council's website, Council's Governance and Risk Coordinator should be contacted prior to lodging an FOI application to check whether the document is readily available without an FOI application being necessary. (For example, many documents may be readily available under different instruments of legislation such as the Register of Planning Permit Applications under the *Planning and Environment Act 1987* and the Register of Building Permits under the *Building Act 1993*.)

Council's Governance and Risk Coordinator can be contacted on telephone 5775 8555.



Information Not Available

Some Council information is not made publicly available. This will only occur if:

- the information is confidential information,
- its release would be contrary to the public interest,
- its release does not comply with the *Privacy and Data Protection Act 2014* or
- it is exempt material under the *Freedom of information Act 1982*.

“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 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/or Delegated Committee meeting that are closed to the public to consider confidential information.
Internal arbitration information	Confidential information relating to internal arbitration about an alleged breach of the Code of Conduct – Councillors.
Councillor Conduct Panel 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> .



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 if releasing the information is likely to cause harm to any person or is not in the public interest to do so.

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

Public Interest Test

Council is not required to make information publicly available if the release would be contrary to the public interest, in accordance with the Act. 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.

When considering possible harm from releasing information, the Council will only concern itself with 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.

Non-Compliance with this Policy

If a member of the community wishes to question a decision about the release of information, this should be raised directly with the officer handling the matter in the first instance. If the member of the community is still not satisfied and would like to contest the decision, this can be reported to Council's Governance and Risk Coordinator on 5775 8555.

If not satisfied with Council's response, the concerns can be raised directly with the Victorian Ombudsman's office on (03) 9613 6222 or via the website www.ombudsman.vic.gov.au

Monitoring, Evaluation and Review

Council commits to monitoring processes, information sharing and decision making to understand the overall level of success in this policy's implementation.

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



DEFINITIONS

For the purposes of this policy, Mansfield Shire Council adopts the following definitions:

- Community** Community is a flexible term used to define groups of connected people. We use it to describe people of a municipality generally, including individuals or groups who live, work, play, study, visit, invest in or pass through the municipality.
- More specifically, it can refer to everyone affiliated with the municipality, 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 structured, as in clubs or associations or unstructured, such as teens, toddlers, over 65s. Communities are flexible and temporary, subject individual identity and location.
- Consultation** The process of seeking input on a matter
- Public Participation** Public participation encompasses a range of public involvement, from simply informing people about what government is doing, delegating decisions to the public and community activity addressing the common good.
- Stakeholder** An individual or group with a strong interest in the decisions of Council and are directly impacted by their outcomes.
- Closed Meetings** When Council resolves to close the meeting to the general public under section 66(5) of the Act, in order to consider a confidential matter regarding issues of a legal, contractual or personnel nature and other issues deemed not in the public interest.
- 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 human rights issue: the right to have the opportunity, without discrimination, to participate in public affairs.

SCOPE

This policy applies to all Councillors, members of delegated committees and Council staff of Mansfield Shire Council.



RESPONSIBILITIES

It is the responsibility of every Councillor and Council officer to promote and facilitate access to Council information in accordance with this policy and the *Public Transparency Principles* outlined in the Act. The following table outlines the roles and responsibilities of Councillors and council staff.

Party/parties	Roles and responsibilities
Council	Champion the commitment and principles for public transparency through leadership, modelling practice and decision-making.
Executive Management Team	Champion behaviours that foster transparency and drive the principles through policy, process and leadership. Monitor implementation of this policy.
Senior Leadership Group	Manage areas of responsibility to ensure public transparency, good governance and community engagement is consistent with this policy.
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.
Governance & Risk Coordinator	To monitor implementation of this policy and conduct periodic reviews to drive continuous improvement.

HUMAN RIGHTS AND RESPONSIBILITIES CHARTER – COMPATIBILITY STATEMENT

This policy has been reviewed against, and complies with, section 13 of the *Charter of Human Rights and Responsibilities Act 2006*. It 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.

REFERENCES / RELATED POLICIES

- *Charter of Human Rights and Responsibilities Act 2006*
- *Equal Opportunity Act 2010*
- *Freedom of Information Act 1982*
- *Local Government Act 1989*
- *Local Government Act 2020*
- *Privacy and Data Protection Act 2014*
- *Public Records Act 1973*
- Mansfield Shire Council's Governance Rules (to be adopted on 1 September 2020)
- Mansfield Shire Council's Community Engagement Policy (to be developed prior to 1 March 2021)



IMPLEMENTATION

This Policy is effective from 1 September 2020.

REVIEW DATE

This Policy is to be reviewed by 1 September 2024.

AUTHORISATION TO IMPLEMENT POLICY

Signed: 
Councillor

Witnessed: 
Chief Executive Officer

Approval dated: 1 September 2020

Mansfield Shire Council reserves the right to review, vary or revoke this Policy at any time.



Appendix 1 - The Public Transparency Principles

The following are the public transparency principles as outlined in the *Local Government Act 2020*.

- (a) Council decision making processes 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.