

Public Transparency Policy 2020

Responsible Service Area: Governance

Adoption Date: 31 August 2020

Policy Title: Public Transparency Policy		Policy No:	Policy type: Council Policy
Policy creation date: 31 August 2020	Current version approved: 31 August 2020	Current version no. 1	Policy review date: 31 August 2020
Policy authority dates: Adopted by Council: 31 August 2020	Child policy/policies: Nil	Policy responsibility: Governance Coordinator	eCLIP record no. 20/168461

1. Purpose

This purpose of this Policy is to:

- 1.1 give effect to the Public Transparency Principles pursuant to section 58 of the Local Government Act 2020 (the Act);
- 1.2 support Council in its ongoing drive for good governance;
- 1.3 describe the ways in which Council Information will be made publicly available;
- 1.4 specify which Council Information will be made publicly available; and
- 1.5 describe the categories of Council Information that may be unavailable to the public.

This Policy is adopted under section 57 of the Act.

2. Relationship to the Maroondah 2040 Community Vision

In relation to *Maroondah 2040: Our future together*, the operation of this policy is aligned with:

Community Outcome:	A well governed and empowered community
Key Directions:	8.1 Provide enhanced governance that is transparent, accessible, inclusive and accountable

3. Alignment with Council's Mission and Values

This policy supports Council's Mission and Values through ensuring the resilience of functions which support the provision of accessible and sustainable lifestyles for the community.

4. Objectives

The objective of this Policy is to formalise Council's support for transparency in its decision-making processes and availability of Council Information and to achieve the purpose stated in Part 1 of this Policy.

5. Scope

This Policy applies to Councillors and Council employees, who are responsible for giving effect to the public transparency principles in their day-to-day roles with Council.

Council acknowledges that members of the community have the right to participate in public affairs, without discrimination. Council is committed to transparency in its decision-making, including by facilitating information needed to collaborate, cooperate and make decisions effectively.

Council will champion the public transparency principles through leadership and decision-making in accordance with the Act and Governance Rules.

6. Definitions

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

Act	means the Local Government Act 2020
Chief Executive Officer	includes an Acting Chief Executive Officer
Closed Meeting	means a Meeting that is closed to members of the public 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
Community	means the residents and ratepayers of, and visitors to, the Municipal District and may, depending on the context, refer to all of those people or to particular subsets of those people
Confidential Information	means confidential information as defined in section 3(1) of the Act
Council Information	means all documents and other information held by Council. Includes records as defined under the Public Records Act, which means any record of information, however recorded, created, or received by a Public Officer in the course of their duties
Council	means Maroondah City Council
Councillor	means a Councillor, as defined in Section 3 of the Act
Council Employees	means the Chief Executive Officer and employees of Council appointed by the Chief Executive Officer.
Council Meeting	means a meeting of the Council, as defined in Section 61(1) of the Local Government Act 2020
Council Website	means Council's website at www.maroondah.vic.gov.au
Good Governance	as defined in section 8(2) of the Act
Governance Rules	means the governance rules adopted by Council under section 60 of the Act, as amended from time to time
Health Information	means health information as defined in section 3(1) of the Health Records Act 2001
Municipal District	means the municipal district of the City of Maroondah
Personal Information	means personal information as defined in section 3(1) of the Privacy and Data Protection Act 2014
Policy	means a formal statement of principle which regulates Council's activities, defines roles and responsibilities within Council, and provides guidance to assist staff in carrying out Council functions in line with Council values and relevant legal obligations
Public Transparency Principles	means the public transparency principles set out in section 58 of the Act and reproduced in Part 8 of this Policy
Requestor	means a person making a request to access Council Information under and in accordance with this Policy

7. Responsibility for this Policy

- 7.1 The Chief Executive Officer is responsible for the application and operation of this Policy.
- 7.2 The Chief Executive Officer may, from time to time, authorise another Officer or Officers to fulfil any of the Chief Executive Officer's functions and duties under this Policy.
- 7.3 Where another Officer is, or other Officers are, authorised under clause 7.2, any reference in this Policy to the Chief Executive Officer is to be read as a reference to that Officer or those Officers.

8. Public Transparency Principles

- 8.1 The Public Transparency Principles are set out in section 58 of the Act as follows:
 - 8.1.1 Council decision-making processes must be transparent, except when Council is dealing with information that is confidential by virtue of the Act or any other Act.
 - 8.1.2 Council Information must be publicly available, unless:
 - (a) the information is confidential by virtue of the Act or any other Act; or
 - (b) public availability of the information would be contrary to the public interest.
 - 8.1.3 Council Information must be understandable and accessible to members of the Municipal District.
 - 8.1.4 Public awareness of the availability of Council Information must be facilitated.
- 8.2 Council will give effect to and implement the Public Transparency Principles in accordance with this Policy.

9. Council decision-making processes

- 9.1 Council decision-making processes will be transparent and open to the Community so that the Community is provided with an opportunity for meaningful engagement with Council and its decision-making processes.
- 9.2 Without limiting the generality of clause 9.1, Council's decision-making processes will:
 - 9.2.1 be conducted in accordance with the Act and the Governance Rules;
 - 9.2.2 unless considering Confidential Information, be conducted in a forum that is open to, and accessible by, the Community; and
 - 9.2.3 be informed by the:
 - (a) views of those members of the Community whose rights and interests will be directly affected by the decision; and
 - (b) responses, if any, to any process of community engagement conducted by Council in respect of the decision.
- 9.3 Further details regarding Council's decision-making process can be found in Part 1 of the Governance Rules.

10. Availability of Council information

- 10.1 All Council Information will be made available to the public, unless the:
 - 10.1.1 Council information is Confidential Information; or
 - 10.1.2 release of the Council Information is assessed by the Chief Executive Officer as being contrary to the public interest.
- 10.2 A list of the categories of Council Information which will generally, subject to this Policy, be made available either on the Council website, at the Council Offices or on request is set out at Appendix 1 to this Policy.

11. Publications

Council publishes a range of newsletters, reports and handbooks for residents, businesses and visitors to the Municipal District. These publications are available on the Council Website, at the Council Offices or on request to Council.

12. Accessibility of Council information

- 12.1 Council information will be made available on the Council website, at the Council Offices and/or on request.
- 12.2 Council will, to the extent possible, facilitate access to Council Information by:
 - 12.2.1 making Council Information available in accordance with this Policy;
 - 12.2.2 endeavouring to make Council Information accessible electronically and in hard copy, where requested; and
 - 12.2.3 endeavouring to convert Council Information to different accessible formats where necessary for members of the Community for whom:
 - (a) English is their second language; or
 - (b) disability requires an alternative means of access to be provided.
- 12.3 Where a request is made for access to Council Information that is not on the Council Website or otherwise available at the Council Offices, the Chief Executive Officer will:
 - 12.3.1 review the request;
 - 12.3.2 assess, and may refuse to provide the information if the request is deemed to be frivolous, vexatious, repetitive, involves confidential information or the information's release would be contrary to the public interest, and
 - 12.3.3 notify the Requestor of the outcome of that assessment.
- 12.4 If the Council Information requested is assessed under clause 12.2 as not being Confidential Information, or its release is assessed as not being contrary to the public interest, the Council Information will be provided to the Requestor.

- 12.5 The Council Information will be provided to the Requestor by email unless the:
 - 12.5.1 Requestor seeks access in a different form, including by reference to the matters stated in clause 12.2.3, in which case the Council Information will be provided in that form, unless it is impracticable to do so; or
 - 12.5.2 Chief Executive Officer, having regard to the nature of the Council Information requested, determines that the Council Information should be provided in a different form, such as by inspection.
- 12.6 Council will provide such support to the Requestor as it considers reasonable to ensure that the Council Information provided is understood by them.
- 12.7 If, under clause 12.2, the Council Information requested is assessed as being Confidential Information, or its release is assessed as being contrary to the public interest, the Requestor will be advised:
 - 12.7.1 that the request has been denied;
 - 12.7.2 of the reasons for the request being denied; and
 - 12.7.3 of alternative mechanisms by which they may seek access to the Council Information (e.g. by making a request under the Freedom of Information Act 1982) - refer also clause 17.
- 12.8 Any request for access to Council Information by way of an alternative mechanism under clause 12.7.3 will be assessed according to the process applicable to it.
- 12.9 Where:
 - 12.9.1 Council Information requested is assessed under clause 12.2 as being Confidential Information, or its release is assessed as being contrary to the public interest; but
 - 12.9.2 it is practicable for that Council Information to be provided with deletions so that it is suitable for release to the Requestor; and
 - 12.9.3 the Chief Executive Officer believes that the Requestor would want the Council Information in that format,.....the Council Information will be provided in that format.

13. Council information that is Not Available

Some Council information may not be made publicly available. This will occur if the information is Confidential Information, or its release would be contrary to the public interest.

13.1 Confidential Information

- 13.1.1 What constitutes Confidential information is set out in section 3(1) of the Act and includes information within the following categories:

Type	Description
Council business information	Information that would prejudice 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, if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.
Confidential meeting information	Records of Council and Delegated Committee meetings that are closed to the public to consider confidential information.
Internal arbitration information	Information provided to, or produced by, an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons.
Councillor Conduct Panel information	Information: <ul style="list-style-type: none"> provided to, or produced by a Principal Councillor Conduct Registrar, for the purposes of an application to form a Councillor Conduct Panel; or provided to, or produced by, a Councillor Conduct Panel for the purposes of conducting a hearing, other than a decision or reasons for a decision; or comprising any part of a statement of reasons or other document under the control of a Councillor Conduct Panel that the Councillor Conduct Panel determines contains confidential information.
Confidential information under the 1989 Act	Information that was confidential information for the purposes of section 77 of the Local Government Act 1989.

13.1.2 In the interests of transparency, Council may, by resolution, determine to release information to the public even though it is Confidential Information.

- 13.1.3 A decision under clause 13.1.2 will generally only be made if Council, on the advice of the Chief Executive Officer, is satisfied that releasing the Confidential Information would not:
- (a) be inconsistent with any legal or contractual obligation;
 - (b) cause disadvantage to any person, including Council; and
 - (c) otherwise be contrary to the public interest.

13.2 Contrary to the Public Interest

- 13.2.1 Council information will not be made publicly available if doing so would be contrary to the public interest.
- 13.2.2 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's decision-making processes.
- 13.2.3 Without limiting clause 13.2.2, 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) 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 arrangements for Officers; or
 - (iii) defence, prosecution and settlement of legal proceedings; or
 - (e) 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.

14. Public awareness of availability of Council information

Council will ensure public awareness of this Policy and the availability of Council Information by:

- 14.1 publishing this Policy on Council's Website;
- 14.2 making this Policy available for public inspection at Council's offices;
- 14.3 converting this Policy to such accessible formats, having regard to clause 12.2.3, as the Chief Executive Officer determines; and
- 14.4 ensuring that all Officers:
 - 14.4.1 are aware of this Policy and its effect; and
 - 14.4.2 direct members of the Community to this Policy when access to Council Information is sought.

15. Human Rights Charter

This Policy has been assessed against the Charter of Human Rights and Responsibilities Act 2006 as being consistent with that Act and, in particular, as promoting the rights of members of the Community:

- 15.1 not to have their privacy interfered with (section 13); and
- 15.2 take part in public life (section 18), by having the opportunity to:
 - 15.2.1 participate in the conduct of Council's affairs; and
 - 15.2.2 have access to Council and Council Information.

16. Non-compliance with this Policy

- 16.1 If a Requestor is not satisfied with Council's application of this Policy and wishes to question a decision about the release of information, they can report the matter to Council's Risk and Integrity Officer/Freedom of Information Officer on 1300 882 233, OR foi@maroondah.vic.gov.au for further advice, such as whether there is another way to obtain the information.
- 16.2 If not satisfied with Council's response, the concerns can be raised directly with the Victorian Ombudsman's office by making a complaint:
 - 16.2.1 online at <https://www.ombudsman.vic.gov.au/complaints>; or
 - 16.2.2 by telephone - 03 9613 6222.

17. Other ways to access information

The Freedom of Information Act 1982 (Fol Act) provides a means of accessing information that Council holds, provided that such information is not deemed to be of a confidential nature, which are exempt from the provisions the Fol Act. However, Council is committed to, where possible, proactive and informal release of information in accordance with the Freedom of Information Professional Standards issued by the Victorian Information Commissioner - refer www.ovic.vic.gov.au

18. Application of this Policy

- 18.1 This Policy applies to all Council Information, except Council Information which is made available, or is otherwise accessible, under another Act (other than an Act which refers to this Policy).
- 18.2 Without limiting the generality of clause 18.1, this Policy does not apply to Council Information which is:
- 18.2.1 required to be made available under the Planning and Environment Act 1987;
 - 18.2.2 required to be made available under the Building Act 1993; or
 - 18.2.3 otherwise required to be made available on payment of a fee or charge.

19. Administrative updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this policy document.

Where an update does not materially alter this document, such a change may be made administratively, as authorised by the Chief Executive Officer.

However, any change or update which materially alters this document must be by resolution of Council.

20. Monitoring, Evaluation and Review

Council will review this Policy periodically to ensure that it continues to reflect the expectations of the Community with respect to the availability and accessibility of Council Information.

Appendix 1 - Council information

For the purposes of clause 10 of this Policy, the following Council information will generally, and subject to this Policy, be made available either on the Council website or at the Council Offices, on request by a member of the Community:

Council information, some of which is available on Council's website, includes, but is not limited to:

- Council Meeting Agendas;
- Statutory Registers required by the Act; and
- Council Policies.