



Ararat Rural City

# Confidential Information Procedure

## **DOCUMENT CONTROL**

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Stakeholder Engagement:

Contracts and Procurement Lead

Strategic Project Lead



# Confidential Information Procedure

## INTENT:

Council endeavours to deliver good governance, open and accountable conduct and greater transparency and clarity in its decision-making processes, as per the Public Transparency Policy.

Council acknowledges that it is appropriate to consider certain matters in closed sessions within council meetings, however it also seeks to limit the number of matters considered confidential where possible.

The intent of this procedure is to provide clarity and consistency on which matters should be treated as confidential and which can be released in the interest of public accountability.

This procedure specifically relates to the Local Government Act 2020 (the Act) section 3(1) Confidential Information (a).

## BACKGROUND:

Section 66 of the Act requires that council meetings be open to the public unless circumstances specified in subsection (2) applies. Clarification has been sought on the treatment of subsection (2) (a), which states: “*the meeting is to consider confidential information*”. Definitions of ‘confidential information’ is provided in section 3(1) Confidential Information. These are provided below in Table 1 with examples.

Most definitions and the situations where they might arise are clear cut. The area that may require further clarification is item (a), which is related to commercial negotiations and is related to area of procurement. This is further detailed below.

Table 1. Meanings provided in section 3(1) Confidential Information, with examples

Item	Meaning	Examples
(a)	Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;	A tender that was approved, subject to a change in the project specifications, which may impact on the cost. Premature release of the approved tenderer and details may negatively impact on Councils ability to negotiate the best possible price on a tender.
(b)	security information, being information that if released is likely to endanger the security of Council property or the safety of any person;	Procedures, processes, locations, passwords or codes for secured storage facilities or secured items.
(c)	land use planning information, being information that if prematurely released is likely to encourage speculation in land values;	Potential amendment changes to planning zones
(d)	law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;	Information related to a criminal or other law enforcement investigation that is underway from the police or other agency.



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(e)	legal privileged information, being information to which legal professional privilege or client legal privilege applies;	Any communication between a lawyer/s and their clients for the purposes of providing legal advice, in the lead up to or during legal proceedings may be legal privileged information and should be treated as confidential.
(f)	personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;	A person's name, address, date of birth, phone number, signature, employment details, racial or ethnic origin, religious beliefs, photographs without consent, etc
(g)	private commercial information, being information provided by a business, commercial or financial undertaking that— (i) relates to trade secrets; or (ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;	Business or investment proposals that could influence the sale price of assets, commercial-in-confidence information about upcoming restructures or projects that may influence share prices, etc.
(h)	confidential meeting information, being the records of meetings closed to the public under section 66(2)(a);	Information previously treated as confidential in a Council Meeting where the confidentiality was not lifted on adoption of the motion.
(i)	internal arbitration information, being information specified in section 145;	Information submitted in an application for internal arbitration as per Section 143, which generally relates to allegations of Councillor misconduct.
(j)	Councillor Conduct Panel confidential information, being information specified in section 169;	Any information that is provided to, or produced by, or otherwise determined by the Councillor Conduct Panel to be confidential information.
(k)	information prescribed by the regulations to be confidential information for the purposes of this definition;	The register of attendance to the Local Government Candidate Training as defined by the Local Government (Electoral) Regulations 2020.
(l)	information that was confidential information for the purposes of section 77 of the Local Government Act 1989;	Section 77 of the the Local Government Act 1989 is for people who are or have been a Councillor or member of a Council Committee and requires that they not release information that is confidential to the Council and that the Council wishes to keep confidential.

## Procurement Policy

The Council must perform procurement activities with unquestionable integrity and in a manner that can withstand the closest possible scrutiny, in accordance with the Act and its Procurement Policy.

The Procurement Policy provides direction for confidentiality of information received by the Council concerning requests for quotations and tenders.



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The Procurement Policy also outlines when information shall be disclosed. The Notification of Outcome and Period in Appendix 3 of the current Policy (approved 30 May 2023) includes the following disclosure requirements:

Procurement Method	Request for quotation or select tender	Request for quotation or select tender	Public tender
Value of Procurement	\$30,000 - \$75,000	\$75,000 to \$150,000 (goods and services) \$75,000 to \$200,000 (works)	\$150,000+ (goods and services) \$200,000+ (works)
Notification of Outcome	Website	Website	Website
Period of Notification	1 month	3 months	6 months

## PROCEDURE:

- 1) Where a decision is required during a closed session of council, all information received and handled prior to the adoption of the motion at a council meeting in relation to the quote or tender shall remain confidential as per the Act and current policies, procedures and Governance Rules.
- 2) When preparing Council Reports, Council Officers are to recommend that on adoption of the motion, the confidentiality of the report and decision may be lifted where:
  - a) Subject to subsections (b), (c) and (d), the notification of the outcome is required to be disclosed publicly as per the Procurement Policy,
  - b) The resolution does not require further commercial negotiations where a public announcement of the successful contractor may prejudice the interests of the Council,
  - c) The Chief Executive Officer has not designated the information as confidential as per the Governance Rules, Chapter 6 (2),
  - d) The report does not contain other confidential information as defined by the Act or other regulations, policies and procedures.
- 3) Council reserves the right to not lift the confidentiality of the report and decision on adoption of the motion at its discretion.

## REFERENCES:

Local Government Act (2020)  
Procurement Policy  
Public Transparency Policy  
Governance Rules