

Program:	Executive Office
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Scope

This policy applies to all confidential information which is held by Mackay Regional Council (MRC) and must be adhered to by Councillors and Staff.

Objective

To assist Councillors and Staff to identify information which is considered confidential and when this information may be released.

Policy Statement

MRC holds information about a range of matters relating to Council business and to the residents of the Mackay Region.

MRC cannot always know in advance which information, if released, will cause negative outcomes for the MRC and its residents. To minimise risks MRC will preserve the confidentiality of this information to the fullest extent possible.

MRC will designate particular information or classes of information as “confidential”, to clarify that the information must be dealt with in a certain way.

This policy does not override MRC’s statutory obligations in respect to the use of information, and its obligations under the *Local Government Act 2009*, *Information Privacy Act 2009* or any other legislation or subordinate legislation to disclose or publish information where this is required by law.

Council considers that to the extent this policy engages and limits, or potentially limits, any human rights, that limitation is reasonable in that it is proportionate and justified.

This process to remain in force until otherwise determined
by Mackay Regional Council

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1.0 Principles

1.1 Confidential Information

The following is a non-exhaustive list of classes of information that are deemed to be confidential to MRC until MRC resolves to the contrary:

- Commercial in confidence information, including where the release of information would affect a third party's competitive advantage; this is particularly relevant in a competitive tender situation;
- Information derived from government departments or Ministers that have been classified as confidential;
- Information of a personal nature or about personal affairs, for example the personal details of Councillors or Staff; names and/or addresses of complainants or witnesses; or decisions made about the same;
- Information relating to a property disposal or acquisition process where release of the information may prejudice MRC;
- Financial and legal analysis where the disclosure of that information may compromise MRC or someone else;
- Information relating to clients or customers of MRC;
- Information not owned or controlled by MRC;
- Information that could result in any action taken against MRC for defamation;
- Information involving legal advice to MRC about a legal issue or a matter before the courts; or anticipated to progress to court;
- Information that is expressly given to Councillors or Staff in confidence;
- Information examined or discussed at Council workshops or briefing sessions, unless the Chief Executive officer (CEO) or relevant Director declares that information (or part thereof) is not confidential;
- Information about:
 - The appointment, termination, or discipline of Staff;
 - Industrial matters affecting Staff;
 - The local government's budget;
 - Rating concessions;
 - Contracts proposed to be made by MRC;
 - Starting or defending legal proceedings involving MRC.

- Any documentation in relation to the preparation or amendment of the Planning Scheme and associated documents.
- Information which is considered exempt information as per Schedule 3 of the *Right to Information Act 2009*.

It is acknowledged that some of the above classes of information may need to be disclosed from time to time for legal proceedings or in accordance with the *Right to Information Act 2009* and the *Information Privacy Act 2009*.

1.2 Confidential Information at Council Meetings

During Council meetings, other meetings of Council, Council workshops and briefings, Councillors will receive information which they know or ought to know is confidential. However, to assist the Councillors, the following applies:

- The CEO may make a declaration that information concerning a specific matter is to be treated as confidential to Council and that information will remain confidential unless or until Council resolves to the contrary;
- An item on a Council or Committee meeting agenda, including the information contained in the documentation or supporting material, that is declared confidential by the CEO is to remain confidential unless or until Council or the relevant Committee resolves to the contrary;
- Information examined or discussed at Council workshops or briefing sessions, unless the Chief Executive officer (CEO) or relevant Director declares that information (or part thereof) is not confidential;
- If the Mayor or a Councillor in a meeting asks that a matter be treated as confidential, Council will formally resolve as to whether all information concerning that matter is confidential;
- If Council resolves an item, including the information contained in the documentation or supporting material, is to be confidential it will remain confidential unless or until Council resolves to the contrary;
- If Council exercises its powers under the *Local Government Regulation 2012* to close a meeting to members of the public, all information in relation to the matters discussed during that closed meeting or the closed portion of the meeting is confidential, unless and until Council resolves to the contrary;
- Any information of a type deemed to be confidential (as per section 1.1) is presumed to be confidential to MRC and must not be released without seeking advice from Corporate Governance; and/or

If there is any doubt as to whether Councillors consider information to be confidential, it should be assumed that Council intends the information to be confidential until the doubt is resolved at a subsequent meeting of Council.

1.3 Responsibilities of Councillors and Staff

Councillors and Staff must make themselves aware of the types of information MRC deems to be confidential and the personal responsibilities they have to ensuring there is no disclosure of this information by:

- Exercising due care when handling or using information acquired in their role with Council;
- Acknowledging that there will be information that must be treated as confidential because to release it would reduce public trust and confidence in the integrity of the Council;
- Acknowledging that disclosure of confidential information constitutes a breach of the *Local Government Act 2009* and this policy, and that an individual could face personal liability for damages caused to third parties;
- If uncertain, presume information is confidential, seek advice and/ or formally request access from Corporate Governance or the CEO prior to any release of it;
- Preventing disclosure of confidential information to any person or organisation, specifically:
 - Avoiding discussing confidential MRC information with family, friends and business associates; and
 - ensuring documents containing confidential information are properly safeguarded at all times – including materials stored at private or business residences.
- Not using confidential information to gain improper advantage for themselves or any other person or body; and
- Not using confidential information to cause harm or detriment to Council or any other person or body.

1.4 Release of Confidential Information

Any release of confidential information for any purpose to any person or organisation (other than to those who are entitled to the information, such as Councillors or Staff) is a breach of the *Local Government Act 2009*.

Release of information can include:

- Orally telling any person about the information or any part of the information.

- Providing the original or a copy of documentation or any part of the documentation that is marked confidential; or
- Paraphrasing any confidential information and providing that in writing or orally.

When an external party is requesting access to Council records, a Councillor and/or Staff is to assume that all information produced, managed by or given to the MRC is assumed to be confidential. Access can only be provided to external parties either under the administrative access process or under the *Right to Information Act 2009* or *Information Privacy Act 2009*, where each application would be assessed on its merits.

1.5 Breach of this Policy

Legislation makes it clear that if a Councillor or Staff, during the course of their normal duties, receives information that is not available to the public, they must not misuse the information, particularly for personal gain.

A member of the public may make a complaint about a statutory breach by a Councillor or Staff of this provision by lodging a formal complaint in accordance with clause 2 below.

MRC has a process in place to deal with any breach of confidentiality and depending on circumstances, may refer the matter to the Crime and Corruption Commission or other appropriate authority; or, in the case of a Councillor, to the to the Office of Independent Assessor.

2.0 Formal Complaints and Review of Decision

Any complaints in relation to the breach of confidentiality or a decision regarding the outcome of a formal complaint will be assessed and managed in accordance with MRC's Administrative Action Complaints Policy or Public Interest Disclosure Policy, copies of which can be found on MRC's website.

When an individual feels that they are the subject of MRC's failure to act compatibly with human rights, they can make a complaint directly to MRC. These complaints will be assessed against the *Human Rights Act 2019*.

Complaints may be made as following:

In writing to
Chief Executive Officer
Mackay Regional Council
PO Box 41
MACKAY QLD 4740

Via Email - complaints@mackay.qld.gov.au

In person at the following MRC Client Services Centres:

- MRC Mackay Office – 73 Gordon Street, Mackay
- MRC Sarina Office – 65 Broad Street, Sarina
- MRC Mirani Council Office – 20 Victoria Street, Mirani

Online - Disclose Portal (**MRC staff only**)

3.0 Definitions

To assist in interpretation the following definitions shall apply:

CEO shall mean the Chief Executive Officer. A person who holds an appointment under section 194 of the *Local Government Act 2009*. This includes a person acting in this position.

Councillors shall mean an elected representative including the Mayor of Mackay Regional Council.

Council shall mean all elected representatives including the Mayor of Mackay Regional Council.

Human Rights Complaint shall mean a complaint about an alleged contravention of section 58-1 by a public entity in relation to an act or decision of the public entity. A human rights complaint will be in accordance with MRC's Administrative Action Complaint Policy.

Information shall mean any discussions, documents, emails, electronic data, pictures, video or knowledge.

MRC shall mean the Mackay Regional Council.

Staff shall mean all persons employed by Mackay Regional Council on a permanent, temporary, casual basis or otherwise engaged by Mackay Regional Council including those under a contract of service or a volunteer program.

4.0 Review of Policy

This policy will be reviewed when any of the following occur:

- The related documents are amended or replaced.
- Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three (3) years.

5.0 Reference

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Planning Act 2016*
- *Right to Information Act 2009*
- *Information Privacy Act 2009*
- *Crime and Corruption Act 2001*
- *Human Rights Act 2019*
- MRC - Code of Conduct
- Code of Conduct for Councillors in Queensland
- MRC Policy 046 - Information Privacy
- MRC Policy 047 - Right to Information

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	Review of Policy	Amendments	Council	28.09.2016
2	Review of Policy	Amendments	Council	27.05.2020
3	Review of Policy	Amendments	Council	08.02.2023