

 <p><b>Mackay</b> REGIONAL COUNCIL</p>	<b>COUNCIL POLICY</b>	
	<b>Confidentiality</b>	
	POLICY NO	019
	DEPARTMENT	Organisational Services
	PROGRAM	Governance and Safety
ENDORSED BY COUNCIL 27 May 2020		Resolution ORD-2020-94

## 1.0 Scope

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

## 2.0 Purpose

To:

- provide guidance in complying with sections 171 and 200 of the *Local Government Act 2009* regarding the proper handling of confidential information; and
- assist Councillors and employees in determining what might be considered confidential information and how this information should be handled.

## 3.0 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*
- Mackay Regional Council Code of Conduct
- Code of Conduct for Councillors in Queensland
- Information Privacy Policy
- Right to Information Policy

## 4.0 Definitions

To assist in interpretation, the following definitions shall apply:

**Confidential information** shall mean, information generally not known by, or available upon request to the public which:

- identifies and relates to a particular individual; or

- carries a risk that – if released or improperly used – would cause harm to MRC or a member of the community or give an unfair advantage to someone.

The following classes of information are deemed to be confidential to MRC unless or until MRC resolves to the contrary:

- Commercial in confidence information, including where the release of information would affect a company's competitive advantage (particularly including competitive tender situations);
- 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 MRC employees;
- 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 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 or a legal issue or a matter before the courts;
- Information that is expressly given in confidence; or
- Information about:
  - The appointment, dismissal or discipline of employees;
  - Industrial matters affecting employees;
  - The local government's budget;
  - Rating concessions;
  - Contracts proposed to be made by it;
  - Starting or defending legal proceedings involving it; or
- Any documentation in relation to the preparation or amendment of the Planning Scheme and associated documents.

**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.

**Council** shall mean the Mayor and Councillors of Mackay Regional Council.

**Employee** shall mean any person who performs work for MRC, including trainees, work experience persons, volunteer staff, consultants and contractors and their employees.

**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.

## 5.0 Background

MRC holds information about a range of matters relating to MRC business and to the residents of the region.

The improper use or disclosure of this information may affect individuals, organisations or MRC and may give an unfair advantage to someone.

To minimise risks to MRC and its residents, MRC will preserve the confidentiality of its information to the fullest extent possible.

There are a number of laws which require MRC to make available certain information to the members of the public or government bodies. MRC will undertake to comply with its obligations under these laws, whilst preserving the confidentiality of this information to the fullest extent possible.

Human Right actions and decisions have been considered when preparing this Policy.

## 6.0 Policy Statement

MRC will preserve the confidentiality of information as far as possible under the law. Confidential information must not be released to any person unless:

- the information relates only to that person (that is, it is solely information about the person); or
- it is information that relates only to a person, and that person has provided the MRC with written authority to release the information to someone else; or

- the release is necessary for the conduct of the MRC business and is in the public interest; or
- MRC is obliged under law to release the information to that person.

If a Councillor or an employee is unsure as to whether information is considered 'confidential', they must consult with Corporate Governance prior to taking any action in relation to the documents that may result in them becoming available.

Councillors or an employee must not access MRC information except to the extent that it is necessary to do so in order to perform their official duties. It is an offence under the *Local Government Act 2009* for a past or present Councillor or employee to make improper use of information that they have acquired by their position with MRC.

## 6.1 Responsibilities

Councillors and employees must be aware of their responsibilities and agree (through the relevant Code of Conduct) that they should:

- exercise due care when handling or using information that must be treated as confidential, because to release it would prejudice public trust and confidence in the integrity of MRC;
- acknowledge that there will be information that must be treated as confidential, because to release it would prejudice public trust and confidence in the integrity of MRC;
- acknowledge that disclosure of confidential information constitutes a breach of the *Local Government Act 2009* and that MRC may take disciplinary action for any damages caused;
- if uncertain, presume information is confidential and seek advice from Corporate Governance prior to any release of it;
- undertake not to disclose and to use their best endeavours to prevent disclosure of confidential information to any person or organisation, specifically:
  - avoid discussing confidential MRC information with family, friends and business associates; and
  - ensure documents containing confidential information is properly safeguarded at all times – including during transmission and how information is stored at private or business residences. If a Councillor or an employee is unsure about the safeguarding of information they must consult with Information Services.
- not use information to gain improper advantage for themselves or any other person or body;

- not use information to cause harm or detriment to MRC or any other person or body.

## 6.2 Confidential Information at Council Meetings

During Council meetings, 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 the information will remain confidential unless or until Council resolves to the contrary;
- An item on an 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 relevant Committee resolves to the contrary;
- If the Council in a meeting asks that a matter be treated as confidential, Council will formally resolve as to whether all information concerning the matter is confidential;
- If a meeting of a Committee 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 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;
- Confidential information will be clearly identified, where possible, as confidential.
- Any information of a type deemed to be confidential (as per section 6.2) is presumed to be confidential to MRC and must not be released without seeking advice from Corporate Governance; or

If there is any doubt as to whether Council considers 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.

## 6.3 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) 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.

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

#### 6.4 Breach of this Policy

Legislation makes it clear that if a Councillor or an MRC employee, 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 an employee of this provision by lodging a formal complaint under MRC's Administrative Action Complaint Policy, a copy of which can be found on the MRC website.

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.

#### 6.5 Human Rights Complaint

When an individual feel that they are the subject of MRC's failure to act compatibly with human rights, they can make a complaint directly to MRC as per MRC's complaint process.

### 7.0 **Review of Policy**

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

1. The related documents are amended or replaced.
2. 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 years.

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Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	Review of Policy	Amendments	Council	28.09.16
2	Review of Policy	Amendments	Council	27.05.2020