

CITY OF WEST TORRENS



Code of Practice: Access to Meetings and Documents

Classification:	Council Policy
First Issued:	2000
Dates of Review:	2001, 2002, 2004, 2007, 2008, 2011, 2012, 2015, 2016, 2020, 2021, 2023
Version Number:	13.1
Objective ID:	A5875
Next Review Due:	2027
Applicable Legislation:	Local Government Act 1999 Freedom of Information Act 1991 Local Government (Procedures at Meetings) Regulations 2013 Behavioural Standards for Council Members
Related Policies or Corporate Documents:	Code of Practice: Procedures at Meetings Council Policy - Public Consultation Council Policy - Internal Review of Council Decisions Council Policy - Customer Complaints
Associated Forms:	
Note:	This is a statutory document and must be reviewed within 12 months of each Local Government General Election.
Responsible Manager:	General Manager Communities
Confirmed by General Manager:	General Manager Communities Date 31 July 2023
Approved by Executive:	Date 31 July 2023
Endorsed by Council:	Date 17 October 2023

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CODE OF PRACTICE – Access to Meetings and Documents

1. Preamble

- 1.1. The City of West Torrens (CWT) acknowledges that the procedures observed during the conduct of a meeting of Council or Council Committee (Committee) should contribute to open, transparent and informed decision-making.
- 1.2. However, Council also recognises that on a limited number of occasions it may be necessary, in the broader community interest, to restrict public access to Council or Committee meetings and/or documents.

2. Purpose

- 2.1 To provide guidelines relating to access to meetings and documents by the public and Elected Members.
- 2.2 To clearly outline the purpose of, and on what basis, Council may apply the provisions of s90 and s91 of the *Local Government Act 1999* (Act) to restrict public access to meetings and/or documents.

3. Scope

- 3.1 This *Code of Practice - Access to Meetings and Documents* (Code) applies to the access to Council or Committee meetings and all documents including Council and Committee agendas, minutes and attachments.
- 3.2 This Code does not apply to the Council Assessment Panel (CAP).

4. Definitions

- 4.1 **Agenda** refers to a list of items of business to be considered at a meeting.
- 4.2 **Clear Days** means the days between the:
 - posting of a notice of a meeting and the day the meeting is held excluding both the day on which the notice is given and the day of the meeting, e.g. when notices are given on a Friday for a following Tuesday meeting, the clear days are Saturday, Sunday and Monday; or
 - holding of a meeting and the day the minutes are released excluding the day of the meeting and the day the minutes are released.
- 4.3 **Minutes** refers to a record of the items discussed and the resolutions made at a meeting of Council or Committee.
- 4.4 **Principal Member** refers to the Mayor.
- 4.5 **Presiding Member** refers to a member appointed by the Council to preside at Committee meetings.
- 4.6 **State Emergency** means a major emergency declaration, identified major incident declaration, disaster declaration, public health emergency or any other emergency as so declared under the relevant Act.

5. Access to Meetings

5.1 Council Meetings

5.1.1 Sections 81(2) and 81(6) of the Act require Council to meet at least once during each month, but not on a Sunday or public holiday and no earlier than 5pm unless Council resolves otherwise by a resolution supported unanimously by all members of Council. Consequently, ordinary Council meetings will commence at 7pm, in the Council Chamber at the Civic Centre, 165 Sir Donald Bradman Drive, Hilton SA 5033, on the third Tuesday of the month with the exception of December each year when Council meets on the second Tuesday of the month.

5.1.2 Special Council meetings may be held at any time.

5.1.2.1 In accordance with the Act, the Chief Executive Officer (CEO) will give each Elected Member at least 4 hours' notice before the commencement of a special Council meeting.

5.2 Committees established under Section 41 of the Act

5.2.1 Council has established four Prescribed Standing Committees that comprise all Elected Members and meet bi-monthly. These Committees are:

5.2.1.1 City Services and Climate Adaptation Standing Committee

This Committee meets on the first Tuesday of alternate months commencing February 2023, with the exception of January and December of each year when no meetings will be held.

5.2.1.2 City Facilities and Waste Standing Committee

This Committee meets on the first Tuesday of alternate months commencing February 2023, with the exception of January and December of each year when no meetings will be held.

5.2.1.3 City Finance and Governance Standing Committee

This Committee meets on the first Tuesday of alternate months commencing March 2023, with the exception of January and December of each year when no meetings will be held.

5.2.1.4 City Advancement and Prosperity Standing Committee

This Committee meets on the first Tuesday of alternate months commencing March 2023, with the exception of January and December of each year when no meetings will be held.

5.2.1.5 Except in a State Emergency, or where Council has resolved to suspend committee meetings.

5.2.2 Council has established two Prescribed General Committees to which Elected Members and, if legally required, independent members are appointed by Council. These Committees, held outside of the ordinary meetings of Council except during a State Emergency declaration, or when Council has moved to suspend committee meetings, are the:

- a. Audit General Committee (a statutory committee established under both s41 and s126 of the Act); and
- b. Chief Executive Officer Performance and Review Committee.

5.2.3 If the Minister has issued an appropriate direction, Elected Members or the public are required and/or able to attend the meeting via electronic means.

5.3 Committees established under a Deed of Trust.

5.3.1 Council has established the Mendelson Committee under a Deed of Trust. As such, the Mendelson Committee does not operate under s41 of the Act. Both Elected Members and independent members are appointed to this Committee in accordance with the provisions of the Deed of Trust with meetings held outside of Council meetings.

a. The public has no legal right of access to this meeting.

5.4 **Notice and Agenda for Meetings**

5.4.1 The CEO will ensure that public notice is given of the times and places of ordinary meetings of Council and Committees via:

a. A notice in hard copy publically displayed at least three (3) clear days before the date of each meeting at the Civic Centre which is the principal office of Council;

b. A notice published on Council's website.

5.4.2 In the case of a special meeting of Council, a notice will be provided as soon as practicable after the time that notice of the meeting is given to Elected Members.

5.4.3 The CEO will ensure copies of the agenda for ordinary meetings are made available for public inspection three clear days before the date of the meeting via:

a. Hard copy displayed in the Civic Centre; and

b. The Council's website.

5.4.3 The notice will be kept on display and continue to be published on Council's website until the completion of the relevant meeting.

5.5 **Meeting Schedules**

5.5.1 The CEO will ensure that a schedule of the dates, times and places set for ordinary meetings of Council and Committees is made available on the City of West Torrens' Website.

5.6 **Public Access to Meetings**

5.6.1 Section 90 of the Act requires Council and Committee meetings be open to the public.

5.6.2 The public will only be excluded from part of a Council or Committee meeting if the need for confidentiality outweighs the principle of open decision-making and an order to exclude the public is made in accordance with s90 of the Act.

5.7 **Circumstances when the public can be excluded from a meeting**

5.7.1 **Council or Committee Meetings**

a. Section 90(3) of the Act provides that Council or a Committee may order that the public be excluded from attendance at any part of a meeting as is necessary to receive, discuss or consider in confidence, any information or matter in the following circumstances:

- a) *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*
- b) *information the disclosure of which:*
 - i) *could reasonably be expected to confer a commercial advantage on a person with whom Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of Council; and*
 - ii) *would, on balance, be contrary to the public interest;*
- c) *information the disclosure of which would reveal a trade secret;*
- d) *commercial information of a confidential nature (not being a trade secret) the disclosure of which:*
 - i) *could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage of a third party; and*
 - ii) *would, on balance, be contrary to the public interest;*
- e) *matters affecting the security of Council, Members or employees of Council, Council property or the safety of any person.*
- f) *information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;*
- g) *matters that must be considered in confidence in order to ensure that Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;*
- h) *legal advice;*
- i) *information relating to actual litigation, or litigation that Council or Committee believes on reasonable grounds will take place, involving Council or an employee of Council;*
- j) *information the disclosure of which:*
 - i) *would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of Council, or a person engaged by Council); and*
 - ii) *would, on balance, be contrary to the public interest;*
- k) *tenders for the supply of goods, the provision of services or the carrying out of works;*
- m) *information relating to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the Planning, Development and Infrastructure Act 2016 before the draft instrument or amendment is released for public consultation under that Act;*
- n) *information relevant to the review of a determination of a Council under the Freedom Of Information Act 1991.*
- o) *Information relating to a proposed award recipient before the presentation of the award.*

- b. Council and Committees cannot make an order, that the public be excluded from a meeting, only on the basis that discussion of a matter in public may cause embarrassment to Council, the Committee, Elected Members, independent members of a Committee or employees of the City of West Torrens; or
 - i. cause a loss of confidence in Council; or
 - ii. involve discussion of a matter that is controversial within the council area; or
 - iii. make the council susceptible to adverse criticism.
- c. When a decision to exclude the public is taken, a note will be made in the minutes of the meeting which details:
 - i. the making of the order;
 - ii. the grounds on which the order was made in accordance with s90(7) of the Act;
 - iii. the basis on which the information or matter to which the order relates falls within the ambit of each ground on which the order was made;
 - iv. if relevant, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest and
 - v. which employees were in attendance.

5.7.2 Information and Briefing Sessions

- 5.7.2.1 Council will, on occasions, hold information and briefing sessions from which the public are excluded in accordance with section 90(3) and 90A of the Act. Section 90A of the Act provides that information and briefing sessions of Elected Members (with or without City of West Torrens' employees) may take place if the matter(s) being discussed are not dealt with in such a way as to obtain, or effectively obtain, a decision on the matter outside a formal meeting of Council or Committee.
- 5.7.2.2 The CEO is responsible for inviting members of Council or a Committee to an information and briefing session.
- 5.7.2.3 The CEO, has absolute discretion to determine whether an information and briefing session will be open to the public.
 - a. When the CEO determines that a matter to be discussed at an information and briefing session is of a confidential nature, within the ambit of s90(3) of the Act, both the sub-section and reason for dealing with the matter in confidence will be recorded on Council's website.
- 5.7.2.4 If an order is issued to exclude the public from an information or briefing session, the CEO will, as soon as reasonably practical after the making of the order, make a record of:
 - a. the grounds on which the order was made; and
 - b. the basis on which the information or matter to which the order relates falls within the ambit of each ground on which the order was made; and
 - c. if relevant, the reasons that receipt, consideration or discussion of the information or matter publicly at the

information or briefing session would be contrary to the public interest.

- 5.7.2.5 The CEO, or delegate, is responsible for ensuring the details of an information or briefing session are publicised on Council's website as soon as practical after it has been arranged.
- 5.7.2.6 The CEO, or delegate, will maintain records of those invited and those that attended information or briefing sessions.
- 5.7.2.7 Council's Annual Report will include details of all information or briefing sessions held by Council in the preceding financial year, including the place, date and time of those information or briefing sessions along with the matters discussed and whether they were held in a place open to the public.

5.8 Approach to the Use of Confidentiality Provisions

- 5.8.1 Any consideration of the use of confidentiality provisions, to exclude the public from the discussion of a particular matter at a meeting, must consider clause 5.7 of this Code.
- 5.8.2 Council, Committee and, information and briefing sessions meetings are guided by the following principles:
 - a. open and accountable government is strongly supported;
 - b. confidentiality provisions will only be used when considered proper and necessary;
 - c. when a decision to exclude the public is taken, the reason and legislative grounds for this will be communicated to the public, both in the meeting at the time of the public being requested to leave, and in the meeting minutes.
- 5.8.3 The CWT cannot guarantee confidentiality in relation to any information provided to it by members of the public. This includes (but is not limited to) information such as the names and addresses of person(s):
 - a. contained in petitions to Council;
 - b. responding to consultation;
 - c. hard copy and electronic correspondence with Council.
- 5.8.4 A report contained in a Council or Committee agenda must meet the requirements of s90 of the Act before the CEO orders that a report be retained in confidence until the matter is presented to Council or a Committee.
 - a. Council or a Committee will determine whether any such information will be retained in confidence, refer clause 6.4.

5.9 Process to Exclude the Public

- 5.9.1 Items to be considered in confidence at Council or Committee meetings will generally be placed at the end of the relevant agenda. However, each meeting may resolve, for the convenience of the public present at the meeting, to deal with a confidential matter earlier in the meeting.
- 5.9.2 Before an order to exclude the public from a meeting, to enable the receipt, discussion and consideration of a particular matter, the Council or Committee will formally determine, in open session, if this is necessary and appropriate.

- a. If it is deemed necessary and appropriate, Council or a Committee, after due consideration will resolve to exclude the public while dealing with a particular matter. The resolution will include the grounds, under the relevant legislation, on which the order to exclude the public was made in accordance with s90 of the Act.
- 5.9.3 When a number of agenda items are identified as confidential within an agenda, the Council or a Committee will:
- a. determine each item separately, and
 - b. consider the grounds for exemption(s) relevant to each item, and
 - c. if so determined, resolve to consider the item in confidence.
- 5.9.4 If Council or a Committee resolves that a particular matter will be considered in confidence, members of the public must immediately leave the Council Chamber or meeting room and/or be disconnected from any electronic access.
- a. If Council or Committee orders that a matter is to be considered in confidence, City of West Torrens' employees are considered to be members of the public and required to leave the meeting unless the Council or Committee resolves to allow them to remain in the meeting while the item is being considered. The names of those employees will be included in the resolution to consider the matter in confidence.
 - b. It is an offence for a member of the public, who knowing that a confidential order is in force, to enter or remain in the room in which a matter is being considered in confidence.
- 5.9.5 If the CEO determines that an information or briefing session will be subject to a confidentiality order, the public will be notified at the time that the information or briefing session is listed on the City of West Torrens Website. This notification will include the prescribed information. Further the prescribed information will be published on the City of West Torrens website as soon as reasonably practical after the holding of the information or briefing session.

5.10 Interruption of Meetings by Members

- 5.10.1 Interruptions of meetings by members will be dealt with in accordance with Regulations 28A and 29 of the *Local Government (Procedures at Meetings) Regulations 2013* (Regulations) and Council's Code of Practice Procedures at Meetings.

5.11 Interruption of Meetings by Others

- 5.11.1 Interruptions of meetings by others will be dealt with in accordance with Regulation 30 of the Regulations and Council's *Code of Practice: Procedures at Meetings*.
- 5.11.2 A member of the public who interrupts the orderly conduct of a meeting must, on request by the Presiding Member, immediately leave the place where the meeting is being held.
- a. If a person does not leave the place where the meeting is held at the request of the Presiding Member, SAPOL will be contacted by an Executive Officer of Council and requested to attend and remove that person.

6. Access to Documents

6.1 Publically available documents, including Council and Committee agendas and minutes are available for inspection at the Civic Centre, and in some cases the Hamra Centre Library as well as on the City of West Torrens' website, except when a notice pursuant to section 302B of the Act amends this requirement, where the Notice will only be available on the City of West Torrens website.

6.2 Requests to access documents held by Council, which are not publically available, can be made in accordance with the *Freedom of Information Act 1991*.

6.2.1 Enquiries in relation to the process for seeking access to documents held by Council should be directed to one of the City of West Torrens' accredited freedom of information officers or via the City of West Torrens' website.

6.3 Access to Agendas

6.3.1 The CEO will make the agenda for each ordinary meeting of Council or Committee available for public inspection at least three clear days before the date of the meeting in hard copy at the Civic Centre and on City of West Torrens' website, except when a notice pursuant to section 302B of the Act amends this requirement, where the Notice will only be available on the City of West Torrens website, at the same time they are forwarded to the members of Council or a Committee.

6.3.2 When a special meeting of Council or a Committee has been called, the CEO will make the agenda for the meeting available for public inspection at a reasonable time before the meeting on the City of West Torrens' website at the same time they are forwarded to the members of Council.

6.3.3 Items listed on the agenda will be described accurately and in reasonable detail. Copies of any documents and reports that are to be considered at the meeting will be supplied to Council or Committee members in accordance with clause 6.3.1.

6.3.4 Items which are deemed to require consideration in confidence will not be contained in a Council or Committee agenda made available to the public pursuant to s84(6)(b) of the Act.

- a. When a confidential item is to be considered by Council or a Committee, a report will be included in the public agenda, made available pursuant to s84(6)(b) of the Act, detailing
 - i. the report title;
 - ii. the basis on which matter should be considered in confidence;
 - iii. the relevant legislative provisions; and
 - iv. the recommendation to Council to consider the matter in confidence.

6.4 Access to Minutes

6.4.1 The CEO will make the minutes of each ordinary or special meeting of Council or a Committee available for public inspection, within five (5) days after the meeting, on the City of West Torrens' website, at the same time they are provided to members of Council or a Committee. A printed copy can be provided on request and on payment of fee as per the Fees and Charges.

6.4.2 In some circumstances Council or a Committee may order that a document(s) relating to a particular matter that has been considered in confidence be retained in confidence in accordance with s91 of the Act.

- 6.4.3 Council or a Committee must not make an order to retain a document in confidence:
- a. to prevent the disclosure of the remuneration or conditions of service of an employee of the City of West Torrens after the remuneration or conditions have been set or determined; or
 - b. to prevent the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by Council as to why a successful tenderer has been selected; or
 - c. to prevent the disclosure of the amount or amounts payable by Council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, Council after the contract has been entered into by all parties to the contract; or
 - d. to prevent the disclosure of the identity of land that has been acquired or disposed of by Council, or of any reasons adopted by Council as to why land has been acquired or disposed of by Council.
- 6.4.4 If the retention of a document(s) in confidence is considered proper and necessary, taking into account the public interest when required, a resolution to this effect contained in the minutes will include the reason and legislative grounds for confidentiality and the circumstances in which the order will cease to apply.
- 6.4.5 Any order that operates for a period exceeding 12 months will be reviewed by Council at least once each year. Such matters will be considered on a case-by-case basis depending on the particular circumstances of the matter.
- 6.4.6 Council may delegate to an employee of the City of West Torrens the power to revoke the order but not extend the order and, if relevant, may place other conditions on the delegation. If an order under section 91(7) of the Act expires or ceases to apply in relation to a document or part of a document, Council will make the document or part of the document (as the case requires) available for inspection as per legislative requirements within a reasonable time.

6.5 Status of Recommendations to Council or Committees by the CEO

- 6.5.1 Recommendations to Council or a Committee, contained in reports within a Council or Committee agenda, have not been considered or approved by Council. It is only after the Council has adopted these recommendations, or made alternative decisions, at a formal Council meeting, the Presiding Member has initialled each page of the minutes and signed and dated the last page of the minutes that they become the approved decisions of Council.
- 6.5.2 Committees do not have the legal ability to make decisions on behalf of Council. Consequently, any decisions contained in the minutes of a Committee have not been considered or approved by Council. It is only after the Council has adopted the recommendations of a Committee, or made alternative decisions, contained in a Council agenda (refer item 10 Adoption of Standing Committee Recommendations and item 11 Adoption of General Committee Recommendations in the agenda), and the Presiding Member has initialled each page of the minutes and signed and dated the last page of the minutes that they become the approved decisions of Council.

6.6 Elected Member Access to Documents

- 6.6.1 An Elected Member may access any relevant document held by the City of West Torrens in conjunction with the performance or discharge of their functions and duties as an Elected Member without any charge and within a reasonable timeframe.
- a. A request for access to a document held by the City of West Torrens is to be directed, in the first instance to the CEO or a General Manager via phone, in person or email. The request should identify the document(s) sought with sufficient detail for the document(s) to be identified and retrieved as well as state the reason(s) for the request.
 - b. The documents requested should relate to matters under consideration by Council.
- 6.6.2 Elected Members will not be granted access to documents regarding the personal affairs of City of West Torrens' employees, other than the Employee Register of Interests and any publically available information.
- 6.6.3 Elected Members must not seek document(s) for personal reasons or release or divulge documents to any third parties. To do so may constitute a breach of the *Behavioural Standards for Council Members* and/or the *Criminal Law Consolidation Act 1935*.
- 6.6.4 The form of access to the document(s) will be negotiated with the Elected Member with regard to administrative efficiency. Forms of access include hard and soft copies or links to websites.
- 6.6.5 If there is a degree of sensitivity surrounding the access to a particular document, the CEO may make the document available to the Elected Member for viewing only at the Civic Centre at a mutual convenient time.

7. Confidential Orders Reporting

- 7.1 A summary of the use of confidential provisions will be provided in the Annual Report. The summary will include the following information:
- 7.1.1 the number of occasions each of the identified provisions for excluding the public was used;
 - 7.1.2 the number of occasions a confidential order was utilised;
 - 7.1.3 the subject of the confidential item (e.g. a property sale or purchase);
 - 7.1.4 the relevant sub-sections of s90 and s91 of the Act under which the order was made.
- 7.2 A list and the status of items retained in confidence will be maintained on City of West Torrens' website and the documents will be made available on the website when the confidential order is revoked.

8. Review of the Code

- 8.1 The Code will be reviewed in accordance with the relevant provisions in the Act.

9. Grievance

- 9.1 If a person is aggrieved about a decision to restrict access to meetings and/or documents they may lodge an application in writing for consideration under the *Council Policy - Internal Review of Council Decisions*, established by Council in accordance with s270 of the Act or lodge a complaint with the South Australian Ombudsman.

- 9.2 If a person is aggrieved by a matter contained in this Code, they may lodge a complaint in writing under the *Council Policy - Customer Complaints* established by Council in accordance with s270 of the Act or lodge a complaint with the SA Ombudsman.