



Code of Practice for Access to Meetings and Associated Documents

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A - PREAMBLE

1. In fulfilling the role of an effective Council that is responsive to the needs of the community and which operates within the legal framework as prescribed by the *Local Government Act 1999*, the City of Salisbury is fully committed to open and transparent government. It recognises, however, on some occasions it may be necessary, in the broader community interest, to restrict public access to discussions or documents. This only happens after due consideration is given to the matter by the Chief Executive Officer.
2. This Code sets out the commitment of the City of Salisbury to provide public access to meetings of Council and associated documents, and outlines the policies and procedures the City of Salisbury will use the provisions in accordance with relevant provisions of the *Local Government Act 1999* to restrict public access. The Code includes:
 - 2.1 Information on the relevant provisions of the *Local Government Act 1999*;
 - 2.2 Council's principles on public access and participation;
 - 2.3 The process that will be adopted when public access is restricted; and
 - 2.4 Grievance procedures if a member of the public believes that the Council has unreasonably restricted public access on a particular matter.

B - SCOPE

1. This Code of Practice applies to all meetings of Council and associated documents.

C - CODE PURPOSE/OBJECTIVES

1. This Code of Practice clearly states the City of Salisbury's commitment to transparent decision making and provides the community with certainty in relation to access to meetings and associated documents.

D - DEFINITIONS

1. 'Associated documents' refers to agendas, reports, attachments and minutes of meetings of Council.
2. 'Meetings of Council' refers to sub-committee, committee and council meetings held in accordance with Chapter 6 (Meetings) of the *Local Government Act 1999*.

E – LOCAL GOVERNMENT ACT PROVISIONS

1. Chapter 6 of the *Local Government Act 1999* sets out the arrangements for Meetings of Council. These meetings are to be held in public except where special circumstances exist as prescribed in the Act and a Council or Committee orders that the public be excluded.
2. There are very strict circumstances in which a discussion or document considered in a meeting of Council can be kept confidential. These provisions are covered in the following sections of the Act:
 - 83(5) Council and 87(10) Committee – the Chief Executive may, after consultation with the principal member of Council, or in the case of a Committee the presiding member, indicate on a document or report provided to the members of the Council or the Committee that the matter may, if the Council or Committee so determines, be considered in confidence. The Chief Executive is required to specify at the same time the basis on which such an order can be made.
 - 90(2) and (3) - circumstances where Council may order that the public can be excluded from attendance at a meeting, or part of it, to enable a matter to be considered in confidence. Appendix 1 provides a list of matters which fall into this category.
 - 91(7) – circumstances where a document considered in confidence can be ordered to remain confidential.
 - 91(8) – circumstances where a Council must **not** order that a document remain confidential.
 - 91(9) – the Council or Committee must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order will be reviewed. The power to revoke an order can also be delegated to an employee of Council.
 - 92 – requires the Council to prepare and adopt a Code of Practice relating to access to meetings and documents. Prior to adoption, alteration or substitution the proposed Code (or changes) must be available for inspection and purchase. Council is also required to follow the relevant steps set out in its public consultation policy.
 - 94 – provides that the Ombudsman may, on receipt of a complaint, investigate the use of these provisions.

F - POLICY STATEMENT

1. The City of Salisbury will:
 - 1.1 Act in the best interest of the community, with honesty, integrity and transparency;
 - 1.2 Represent the interests of the Salisbury community through responsible, open and accessible government;
 - 1.3 Ensure confidentiality provisions will only be utilised when considered absolutely necessary;
 - 1.4 Ensure that in all cases, the information be made publicly available at the earliest possible opportunity.
2. The City of Salisbury will conduct all formal meetings of Council in public and will provide public access to all documents considered at those meetings, except where the meeting of Council is clearly satisfied that the need for confidentiality outweighs the principle of open decision making.

At the City of Salisbury the following procedures apply to encourage public access:

- 2.1 At least three clear days before a meeting of Council, a copy of the Agenda for the meeting will be placed on public display in the foyer of the Municipal Office (the Agenda is defined as being a list of items of business to be considered).
- 2.2 A copy of associated reports to be considered will be available for public inspection at the same time and place as the Agenda. Members of the public may request a copy of a particular report or reports for a small fee to cover the costs of duplication.
- 2.3 Business papers of all meetings of Council will be published on Council's Internet site – www.salisbury.sa.gov.au.
- 2.4 If, in the opinion of the Chief Executive Officer, a matter is likely to be required to be dealt with in confidence, that matter will be noted on the Agenda together with the reason that it may need to be discussed in confidence. The reason must fall under Section 90(3) of the *Local Government Act 1999*.
- 2.5 Where a report has been considered in confidence and restricted from public access, the report will be reviewed internally twice a year being January and July to determine its confidential status for possible release to the public.

3. **Public Access to Meetings**

At the City of Salisbury, public access to meetings of Council is guaranteed, except where indicated on the Agenda that a matter may need to be discussed in confidence as outlined above. Examples where the public may be excluded include:

- 3.1 *The Council is intending to bid at auction to acquire land and would not want others involved such as the vendor to have prior knowledge of what the Council was setting as an upper limit to bid at the auction, as to do so would prejudice the position of the Council and disadvantage the community.*
- 3.2 *Matters affecting the security of the Council, members or employees of the Council, or Council property, or the safety of any person.*

The public will only be excluded when considered absolutely necessary and the need for confidentiality outweighs the principle of open decision making.

4. **Process to Exclude the Public**

Before a meeting excludes the public from discussion of a particular matter presented in confidence in the Agenda, the meeting will formally determine if this is necessary and that it falls within Section 90 (3) of the Act. The meeting will then pass an appropriate resolution to exclude the public.

The debate on whether or not the public should be excluded will be held in public.

The public will only be excluded after a motion to that effect is carried.

If a resolution to exclude the public is made, the grounds for this will be communicated to the public present at the meeting and will be recorded in the Minutes.

If this occurs then the public must leave the room in which the meeting is being held.

For the convenience of the public present at a meeting, where it is resolved to consider a matter in confidence, the matter is to be placed last on the agenda and deferred until all other business has been dealt with. This avoids the need to ask the public to leave the room and wait until the matter is concluded and then allow them to return to the meeting room with the possibility of the same process being repeated for a subsequent matter.

5. **Public Access to Documents**

The City of Salisbury will only order that a document associated with a discussion from which the public are excluded will remain confidential, if it is considered absolutely necessary in the broader

community interest. Council can only make orders in relation to documents that were considered in confidence under section 90(3) of the *Local Government Act 1999*.

Any inquiries in relation to the process for seeking access to documents held by the Council should be directed to the Freedom of Information Officer on 8406 8222 or email:

city@salisbury.sa.gov.au.

6. Reviewing and Revoking Confidential Orders

Where keeping a document confidential is considered absolutely necessary, a resolution to this effect is required, which shall include the grounds for confidentiality and the duration of the order or circumstances in which the order will cease to apply or when the order must be reviewed.

It is the general practice of this Council to review all confidential orders twice a year (refer paragraph 2.). Depending on the nature of the material, the confidentiality order may be lifted at the time of review, thereby providing access by the public, or another review period may be set.

Council may delegate to an officer or employee the authority to revoke a confidential order, and if relevant, may add conditions as to when the delegation can be used.

Example

Council resolved to bid \$100,000 at auction for a parcel of land. An order that this discussion be confidential could be made in accordance with section 90(3)(b). Council resolved that the document containing information on the value of land remain confidential in accordance with section 91(7). Council could delegate that the CEO have the authority to make this information public following the completion of the acquisition of the land in accordance with section 91(9)(c).

7. Person Requesting a Matter to be Kept Confidential

Where a person provides information to the Council and requests that it be kept confidential, the Council is not able to even consider the request unless the matter is one that falls within section 90(3). If this is the case, Council will then be in a position to consider the request on its relative merits.

8. Accountability and Reporting to the Community

Council has undertaken to report on an annual basis in the Annual Report on the use of all confidentiality provisions. The report will include the following information:

- 8.1 Number of occasions each of the provisions of section 90(3) and section 91(7) were utilised.
- 8.2 Number of occasions each of the provisions of section 90(3) and section 91(7) were utilised, expressed as a percentage of total agenda items considered.
- 8.3 An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion e.g. a proposal to acquire parcel of land x was considered on 4 separate occasions.
- 8.4 An indication of the categories of section 90(3) that were used most frequently.
- 8.5 Number of occasions that information originally declared confidential has subsequently been made publicly available.

The Annual Report is available on Council's website – www.salisbury.sa.gov.au. Copies can be provided on request.

9. Grievances

In the first instance, any questions or complaints about the use of confidentiality provisions should be raised with the Manager Governance and Customer Service. The question or complaint should be made in writing (wherever possible) to ensure all grievances are considered and acted upon in a proper manner. Questions or complaints should be marked to the attention of the Manager Governance and Customer Service, City of Salisbury, PO Box 8, Salisbury SA 5108 or via email city@salisbury.sa.gov.au.

Initially information on the application of confidential provisions and full explanation of the details and circumstances relating to the complaint will be provided. It is anticipated that most, if not all, questions or complaints will be resolved through this process.

Should this not resolve the matter, a formal application for internal review of this decision can be made. This will be dealt with in accordance with Council's Internal Review of Council Decisions Process.

If you remain aggrieved about an action of Council, you have the option of seeking to have the Ombudsman review the matter as an independent umpire. It is hoped that all grievances can be resolved with Council, but if not, Council's Contact Officer can provide details of how to contact the Ombudsman if required.

10. Review

The City of Salisbury is required, by the *Local Government Act 1999*, to review this code within 12 months of a periodic election. Council has the ability to review this code at any time if considered necessary.

In accordance with the City of Salisbury's Public Consultation Policy, when being reviewed, a notice will be published in a paper circulating the area and inviting interested persons to make submissions to Council on the code within a period being at least twenty one (21) days from the date of the notice.

11. Further Information

The Contact Officer for further information at the City of Salisbury is the Manager Governance and Customer Service, or in their absence the Governance Coordinator, telephone 8406 8222 or email: city@salisbury.sa.gov.au.

G - LEGISLATION

1. Section 92 of the *Local Government Act 1999*
2. Chapter 6 of the *Local Government Act 1999*

H - REFERENCES

1. Internal Review of Council Decisions - *Section 270 Local Government Act 1999*
2. City of Salisbury Code of Practice for Meeting Procedures

Document Control

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Appendix 1 – Matters for which members of the public may be excluded

Council, or a committee may order that the public be excluded 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 the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the 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 on a third party; and
 - (ii) would, on balance, be contrary to the public interest.
- e. matters affecting the security of the council, members or employees of the council, or 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 the 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 the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the 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 the council, or a person engaged by the council); and
 - (ii) would, on balance, be contrary to the public interest;
- k. tenders for supply of goods, the provision of services or the carrying out of works;
- m. information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Plan Amendment Report relating to the 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.

The Act provides for a definition of “personal affairs” being a person’s financial affairs, criminal records, marital or other personal relationships, personal qualities, attributes or health status, or that person’s employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person.