

<b>POL</b>	<b>ACCESS TO INFORMATION BY COUNCIL &amp; COMMITTEE MEMBERS</b>	<b>SC31</b>
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<b>POLICY CODE:</b>	SC31
<b>DIRECTORATE:</b>	Executive Services
<b>BUSINESS UNIT:</b>	Executive Support
<b>SERVICE UNIT:</b>	Executive Support
<b>RESPONSIBLE OFFICER:</b>	Director, Governance & Community Services
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## **BACKGROUND:**

Section 5.92 of the Local Government Act 1995 (“LG Act”) gives a right of access to Council and Committee Members to any information held by the local government that is relevant to the performance of their functions.

### General Principles of the Policy:

In addressing the provisions of section 5.92, this Policy reflects the following broad principles which may be applied in construing the Policy:

- (a) Requests for information by Council or Committee Members should be made directly to the CEO in the case of current matters, and through the Mayor to the CEO in other cases.
- (b) There should be ready access to information relevant to current matters and information covered by section 5.94 of the LG Act.
- (c) A request for information relevant to non-current matters should be complied with if it is reasonable and the CEO has no good reason for refusal.
- (d) The CEO may impose conditions as to the use of information supplied, or as to access to or custody of documents provided in response to a request.
- (e) A member denied access to information by a decision of the CEO or the Mayor, or who is dissatisfied with a condition imposed by the CEO as to use

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of any information or access to or custody of any document may seek a Council determination on the issue.

- (f) In ordinary circumstances access to information should not be given to a Council or Committee Member who appears to have a financial interest in that matter or an impartiality interest, beyond the information that would ordinarily be made available to a person under s. 5.94 of the LG Act.

**PURPOSE:**

The purpose of this Policy is to provide guidance within the City of Cockburn for the application of section 5.92 of the LG Act relating to access to information by Council and Committee Members and related matters.

Section 5.92 of the LG Act provides as follows –

- “(1) A person who is a council member or a committee member can have access to any information held by the local government that is relevant to the performance by the person of any of his or her functions under this Act or under any other written law.
- (2) Without limiting sub-section (1), a council member can have access to -
- (a) all written contracts entered into by the local government; and
- (b) all documents relating to written contracts proposed to be entered into by the local government.”

The Policy does not affect any right of access to information under the Freedom of Information Act 1992

**POLICY:**

- (1) Request for current Information
1. A request by any Council or Committee Member for access to information that is relevant to a matter currently before the Council, or a Committee or likely to come before the Council or a Committee in the future (“current information”) should be directed in the first instance to the CEO.
- (2) Access to current Information
1. The CEO should provide to all Council Members access to any current information.

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2. Without limiting the generality of the foregoing, the access referred to in the preceding paragraph includes access by Council Members to all written contracts entered into by the City and all documents relating to written contracts proposed to be entered into by the City.
3. The CEO should provide to any Committee Member access to all the information that is relevant to a matter currently before that Committee, but not including information referred to in 2.2 above unless:
  - (a) the member requesting is a Council Member; or
  - (b) otherwise unless the CEO considers access to the information is appropriate.
4. As a general principle the CEO should not refuse access under this Policy to any information to which the public may have access under s.5.94 of the Act.
5. Where access to information should be given under the preceding paragraphs, the CEO should provide a copy of any information which comprises a document if a request is made and if practicable to do so.

(3) Referral of Requests to Mayor and Council

1.
  - (a) Any Council or Committee Member whose request for current information is refused by the CEO may refer the request to the Mayor who should receive it as a request under this clause.
  - (b) Any Council or Committee Member who seeks access to any information that is in the possession of the City but that is not current information, should refer the request to the Mayor in the first instance, together with a brief written explanation of the reasons for seeking the information.
  - (c) The Mayor has responsibility for any necessary liaison with the CEO in regard to a request under item (a) or (b) above.
2. If the Mayor considers that a request by a Council or Committee Member for access to information referred to the Mayor under the preceding clause is reasonable, the Mayor should pass on that request to the CEO together with the member's written reason in the case of a request for non current information.
3. The CEO should comply with a request received pursuant to clause 3.2 of this Policy unless:

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- (a) in the opinion of the CEO, compliance with the request would divert a substantial and unreasonable portion of the local government's resources away from its other functions; or
  - (b) in the opinion of the CEO there is any other reason for refusing compliance.
4. Where there is a refusal by the CEO under clause 3.3 the CEO is to give that response to the Mayor with a written explanation of the reasons for refusal.
  5. Where any request for information referred by the Mayor to the CEO under the preceding clauses of this Part 3 of this Policy is refused by the CEO, if the Council or Committee Member requesting the information (including the Mayor) is not satisfied with the CEO's reasons for refusal, and if the Mayor considers it appropriate to do so, the Mayor should cause the issue to be brought before the Council at the next Ordinary Meeting of the Council or at a Special Meeting of the Council called for the purpose in accordance with the Local Government Act and the Standing Orders. To enable the Council to review the decision made by the CEO, the Mayor should provide to the Council the member's written reasons for requesting the information (in the case of non current information) and the CEO's written reasons for refusal.
  6. If a Council Member who has sought access to information through the Mayor is not satisfied either:
    - (a) with a refusal by the Mayor to refer the matter to the CEO; or
    - (b) with reasons for refusal given by the CEO to the Mayor and a refusal by the Mayor to refer the matter to the Council,

the Council Member may give notice of the matter to be brought forward as an item of business at the next Ordinary Meeting of the Council, or by bringing the matter forward in accordance with the provisions of the LG Act and the Standing Orders at a Special Meeting of the Council. In that case the Council Member's written reasons for seeking the information, the CEO's written reasons for refusal (if applicable), and any written explanation given by the Mayor for any decision made by the Mayor, should be provided to the Council.

The provisions in this clause 3.6 do not apply to a Committee Member who is not a Council Member.

7. In forming an opinion upon or determining any question relating to access to information under this Part 3, the Mayor, the CEO and the Council respectively are to apply the principle that a Council or

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Committee Member should not be denied access to any information held by the City if it is clear that the information is relevant to the performance by the Member of any of the Member's functions under the LG Act or under any other written law.

(4) Copies to other Members

1. Where a copy of information is given to a Council Member who requires it under this Part 2 of this Policy, all other Council Members are to be advised and offered to be provided with a copy of the same information.
2. Where a copy of information is otherwise given to a Council Member under this Policy, all other Council Members are to be advised and offered to be provided with a copy of the same information.

(5) Conditions Imposed on Access to Information

1. Where it appears to the CEO in dealing with a request by a Council or Committee Member for access to any information held by the City that:
  - (a) there is doubt as to whether access to the information is relevant to the performance by the Member of any of the Member's functions under the LG Act or under any other written law; or
  - (b) the information is of a confidential nature; or
  - (c) the information for some other reason (e.g. possibility of defamation) should be subjected to special custodial arrangements,

BUT the CEO nevertheless considers that access to the information should be given, the CEO in those circumstances may impose conditions on the access including (but without limiting the generality of the foregoing):

- conditions in relation to the use of the information;
- conditions in relation to custody of any document;
- conditions in relation to the time during which the member may retain any document in the member's possession or otherwise stipulating when the document must be returned,

AND THE CEO MAY in any of the circumstances referred to above refuse to allow any document to be copied, or to be removed from the place where access is given.

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(6) Decision by Council

1. If a Council or Committee Member is dissatisfied with a condition imposed by the CEO on access to any information, or as to the custody of any document pursuant to the preceding provisions of this Policy, the Member may request the CEO to refer the matter to the Council for determination, and in that case the CEO shall ensure that the matter is brought forward as an item of business at the next Ordinary Meeting of the Council.
2. If an issue is referred to the Council under the preceding provisions of this Policy, the Council should determine the issue by resolution by simple majority, and may apply conditions to any decision giving access to information. The Member making the request for information and the CEO, as appropriate, shall act without delay upon any decision made by the Council.