

Ku-ring-gai Council

Policy

Councillor Access to Information, Interactions with Staff and Records Management

Version Number 5

Adopted: XXX

Effective: XXX



Councillor Access to Information, Interactions with Staff and Records Management

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Controlled Document Information

Authorisation Details

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Controlled Document Number:	96	TRIM Record No:	2015/037376
Controlled Document Type:	Policy		
Controlled Document Name:	Councillor Access to Information, Interactions with Staff and Records Management		
Version Number:	5		
Department:	Corporate		
Distribution:	Internal		
Review Period: Max < 4 years	4 years	Next Review Date:	XXX
Document Status:	Draft		
Approval Type:	Adopted by Council		
Version Start Date:	XXX	Version End Date:	

Related Document Information, Standards & References

Related Legislation:	<p>Local Government Act 1993</p> <p>Local Government (General) Regulation 2005 Section 193</p> <p>Government Information (Public Access) Act 2009</p> <p>Privacy and Personal Information Protection Act 1998</p> <p>Health Records and Information Privacy Act 2002</p> <p>State Records Act 1998 (Amended 2005)</p> <p>State Records Regulation 2015</p> <ul style="list-style-type: none"> • State Records Compliance Audit 2008 • Records Management Health Check • Vital Records Audit 2011-12 	<p>Local Government Act and Regulations - sections relating to the Code of Conduct.</p> <p>GIPAA, PPIPA, HRIPA relate to provision of information and privacy considerations generally.</p> <p>s10</p> <p>Made under the State Records Act 1998. Assessments/ audits demonstrating that systems operate routinely</p> <p>Provides organisations with a review of their recordkeeping process, assessing compliance and organisational risk, utilisation and user engagement, configuration issues, with recommendations for improvement</p> <p>Identifying and protecting vital records will save valuable time and resources after an emergency and will allow recovery personnel to concentrate on</p>
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	<ul style="list-style-type: none"> 2013 Digital Recordkeeping Self-Assessment Questionnaire – Standard on Digital Record Keeping 	restoring operations rather than finding information To measure compliance with the Standard on digital recordkeeping and more broadly to assess the implementation of digital recordkeeping within the NSW Public Sector.
Related Policies (Council & Internal)	Code of Conduct Code of Meeting Practice Conflict of Interests Policy Councillor Expenses and Facilities Policy Internal Reporting Policy – Protected Disclosures Records Management Policy	
Related Documents - Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements, etc	Councillor / Staff Liaison List	Trim Reference TBC once endorsed by GMD
Other References		

Version History

Version Number	Version Start Date	Version End Date	Author	Details and Comments
1	02/06/1998	29/08/2007	Matt Ryan	Original
2	29/08/2007	29/04/2009	Matt Ryan	Legislative update, minor review
3	28/04/2009	09/10/2012	Matt Ryan	Update after revised Code of Conduct adopted Min 33 OMC 24 Feb 2009
4	09/10/2012	Current	Matt Ryan	Legislative update (GIPA Act), minor review
5		Draft	Michael Wearne	Update policy to integrate Councillor Records Management

Policy

Purpose and Objectives

Under the provisions in the *Local Government Act 1993* (the Act), Councillors and staff have distinctly different roles to play in Council. The Act stipulates that Councillors as a group direct and control the Council's affairs, allocate resources, determine policy and monitor its performance. The General Manager with the senior officers of Council are responsible for the effective management of the organisation and the carrying out of Council's policies and strategic objectives.

Records are a vital asset and resource to Council. Many records created and received by Councillors have the potential to:

- Support the work of Councillors and Council's program delivery, management and administration,
- Help Councillors and Council to deliver customer services in an efficient, fair and equitable manner,
- Provide evidence of Councillor's actions and decisions and establish precedents for future decision making,
- Protect the rights and interests of the Council, Councillors and its clients and rate payers,
- Ensure accountability of Council's business activities through evidence, and
- Enable information sharing.

Councillors have a right to access Council information that is reasonably necessary for exercising the functions of civic office. However, adequate checks and balances need to be in place to oversee the administering and use of information, and the security of confidential information whilst ensuring the facilitation of a Councillor's legal right to access information. Councillors also have a responsibility to keep full and accurate records of Council-related business and decision-making processes and activities concerning Council.

The records that Councillors create, send or receive in the course of official Council business may be identified as state records for the purposes of the Act (see the statement of procedures section of this policy for further definition on what records are identified as state records).

This policy is not intended to limit any statutory and common law rights of Councillors to access information. However, Councillors should avoid any perceptions of wrongdoing when exercising their rights as an elected representative.

In this Policy, the term "Councillor" also includes an Administrator and a Planning Panel member should such positions exist.

Scope

The objectives of this policy are to:

- Provide a documented process on what communication channels are available to Councillors to enable access to information and buildings,
- Ensure the facilitation of access to all documents necessary for Councillors to exercise their statutory role as a member of the governing body of the Council,
- Ensure Councillors receive advice to assist in the performance of their civic duties,
- Provide direction on Councillors' rights of access to information and facilities,
- Provide a clear and consistent framework for the reporting of, and appropriate application of sanctions for breaches of this policy, and
- Ensure that full and accurate records of the activities and decisions of Councillors undertaken for their civic duties to Council are created, managed and disposed of appropriately to meet organisational needs and legislative requirements.

This Policy should be read in conjunction with Part 8 of Council's *Code of Conduct - Access to Information and Council Resources*; Council's *Interaction with Staff Procedure*; and Council's *Records Management Policy*.

Roles and Responsibilities

Legislation for Councillors and Staff

Chapters 9 and 11 of the Act set out the statutory roles and duties of Councillors and the General Manager.

Chapter 9 includes provisions which explain the role of the **governing body** (section 222 and 223), **Mayor** (section 226), of a **Councillor** as a member of the governing body (section 232(1)) and as an elected person (section 232(2)) and the role and functions of the **General Manager** (section 335).

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Policy Statement

Part 1: Access to Council Records by Councillors

Councillors' rights to access information is managed by provisions in statutory legislation (State Records Act 1998), Council's Code of Conduct and this policy.

Statutory Provisions

Under Section 6 of the GIPA Act, Council must make open access information mandatorily available unless there is an overriding public interest against disclosure of the information. Open access information is outlined in the *Government Information (Public Access) Regulation 2018*. This information is open access information and is to be made publicly available on a website maintained by Council and can also be made publicly available in any other way Council considers appropriate.

Code of Conduct Provisions

Part 8 of the Code of Conduct deals with:

- Councillors and Administrators access to information
- Councillors and Administrators to properly examine and consider information
- Refusal of access to documents
- Use of certain Council information
- Use and security of confidential information
- Personal information

Council Policy Provisions

- Councillors are entitled access to all Council files, records or other documents where that document is identified as open access information under the GIPA Act or to a matter currently before the Council.
- If access to information is refused by the General Manager, Councillors can request access either by a Notice of Motion to the Council or a GIPA application.
- Council staff will register all requests by Councillors for access to information in Council's electronic document management system.
- Councillors can request access to information relating to a matter on a meeting agenda from the General Manager, Director, or anyone else requested by the General Manager or Director responsible for the report.
- Where there are issues regarding the volume, duplication and reasonableness of requests for information by individual Councillors, the General Manager shall have responsibility for determining if the information can be supplied after assessing the impact on staff resources and other Council work. If the requests are deemed by the General Manager to breach the principles of reasonableness, or impact significantly on staff resources, then the General Manager should report the matter to the Council for determination. Options for alternative provision of information, such as verbal responses instead of typed lengthy responses, may be proposed by the General Manager.
- Staff shall take all reasonable steps to ensure that the information upon which decisions or actions are based on is factually correct and that all relevant information has been obtained.

- Councillors must not release information about a third party except in accordance with the provisions of the *Privacy and Personal Information Protection Act 1998*
- Councillors must not release health information about a third party except in accordance with the provisions of the *Health Records and Information Privacy Act 2002*
- Confidential information must only be used for purposes relating to a Councillor's civic duty.
- Paper-based records can be made available for viewing on Council premises if required.
- As elected members of the Council, Councillors are entitled to have access to the Council Chamber, the Level 3 Board Room, the Ante Room, the Councillors' Office and the public areas of the Council's buildings. Councillors who are not in pursuit of their civic duties have the same rights of access to Council buildings and premises as any other member of the public. A Councillor has no rights to enter staff-only areas without the express authorisation of the General Manager or a Director. Councillors must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

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Part 2: Records Management for Councillors

Records exist for a variety of administrative, functional, legislative, historical and legal reasons. Their existence serves to protect Council's interests and the interests of the community we serve. As such, Council is committed to managing its records effectively and efficiently. This includes responsible records management practices by Councillors.

Councillors should create and capture full and accurate records of any business undertaken in the course of their official duties for Council. This includes any records containing:

- Provision of advice, instructions or recommendations,
- Decisions, commitments or agreements binding for the Councillor or Council,
- Draft documents for Council containing significant annotations or submitted for comment or approval of others, and
- Correspondence received and sent relating to work undertaken for Council

Accurate record keeping provides protection for Councillors, in the event that questions are raised regarding their conduct. Documenting events, activities and decisions enables Councillors to recall or provide information on a matter where relevant.

The ICAC 'Lobbying Local Government Councillors' Guideline identifies that maintaining accurate records of meetings support transparency of Councillor conduct, particularly in situations involving lobbying on building and development matters. ICAC advises, in relation to record keeping, that Councillors should:

- Document all communications with proponents, e.g. meetings, phone calls, emails, etc.
- Provide copies of information presented at meetings to Council officers for assessment.
- Refer any documents or meeting notes to Council Officers for registration into Council's official record keeping system.
- Request that persons lobbying Councillors put their argument in writing.

Capturing Records

Records of Council business received or created by Councillors from parties other than Council should be saved into Council's records management system as soon as practicable.

Paper records should be forwarded to the Executive Assistant to the Mayor and Councillors.

Email and electronic records should be forwarded to the "Councillors Records" email address (CouncillorRecords@kmc.nsw.gov.au).

Councillors' copies: If a Councillor retains copies of any records once the original has been forwarded for registration, these should be retained only while needed for current Council business.

If the records are sensitive or confidential, the Councillor should attach a note to the record so appropriate security controls can be applied.

Records Registration

Records received from Councillors for registration will be handled by in accordance with Council's Records Management Policy.

The Executive Assistant to the Mayor and Councillors will register all incoming and outgoing correspondence to/from the Mayor.

Incoming mail received for Councillors will be sent unopened to the Executive Assistant to the Mayor and Councillors for distribution. It is the responsibility of each Councillor to return any mail related to Council business to the Executive Assistant to the Mayor and Councillors for registration.

It is also the responsibility of each Councillor to ensure that any emails related to Council business that are received or sent by them are captured in Council's electronic document management system. These emails should be forwarded to the Councillors Records inbox where they will be registered by specific staff.

Storage and Disposal of Records

All Councillors in possession of records are required to store them appropriately. Confidential records should be stored in a secure location.

Councillors should liaise with the Manager Governance and Corporate Strategy concerning the disposal of any records of Council business. Councillors may destroy copies of records they have received. Any original documents should be referred to Council.

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Part 3: Interactions with Staff

Councillors in their civic duties often require support of Council staff to understand Council functions, projects and business. Hence, there often needs to be interaction between Councillors and officers of Council. This has created the need for guidelines that help Councillors and staff understand what interactions are (and are not) acceptable, whom Councillors can interact with, and how interactions can occur.

The General Manager is responsible for ensuring proper working relationships are maintained between Councillors and Staff and dealing with any complaints concerning Councillor requests.

Obligations During Meetings

The interactions of Councillors and staff during Council and Committee meetings are regulated under the following mechanisms:

- Section 360 of the Local Government Act – enables Councils to adopt a Code of Meeting Practice and states meetings must be conducted in accordance with the Code.
- The Local Government (General) Regulation 2005.
- Code of Conduct.
- Code of Meeting Practice – details how Councillors can ask questions of staff during meetings.

Outside of Meetings

As the General Manager is responsible to Council for the performance and direction of all staff, and the day-to-day management of Council, all queries by Councillors should be directed to the General Manager or persons nominated by the General Manager.

If a Councillor is concerned with a staff member's ability to fulfil the request, they should raise the matter with the General Manager (or the Mayor if it was the General Manager in question).

Directors may direct a Council Manager or officer to contact a Councillor via email or phone in response to a request. Managers and officers, with their Director's approval, may email or phone a Councillor directly if necessary to obtain information to perform the duties.

The General Manager will make a Councillor / Staff Liaison List available to Councillors and all staff. This list will be updated and amended by the General Manager as required.

Breaches of this Policy

A breach of this Policy will be taken to be a breach of Council's Code of Conduct. Complaints alleging a breach of this policy must be made in accordance with the Code of Conduct and will be dealt with in accordance with the provisions of the Code of Conduct.

Where a Councillor believes that the General Manager has failed to provide information to Councillors in accordance with the policy, the Councillor shall immediately report the matter to the Mayor.

Definitions

Term / Abbreviation	Definition
Business Activities	umbrella term covering all the functions, processes, activities and transactions of an organisation and its employees. Records that document business activity are vital for supporting informed decision making, corporate memory and ensuring accountability.
Disposal	a range of processes associated with implementing appraisal decisions. These include the retention, deletion or destruction of records in or from recordkeeping systems. They may also include the migration or transmission of records between recordkeeping systems, and the transfer of custody or ownership of records.
Recordkeeping	making and maintaining complete, accurate and reliable evidence of business transactions in the form of recorded information.
Records	any source of information compiled, recorded or stored in written form, or on film, or by electronic process, or in any other manner or by any other means (State Records Act 1998, Part 1, Preliminary, Section 3(1), Definitions
Records Management	the discipline and organisational function of managing records to meet operational business needs, accountability requirements and community expectations.
State Record	any record, made or kept, or received and kept, by any person in the course of the exercise of official functions in a public office, or for any purpose of a public office, or for the use of a public office.